

**LETTER OPINION
2001-L-30**

August 13, 2001

Honorable Bruce Eckre
State Representative
1300 North 7th Street
Wahpeton, ND 58075-3625

Dear Representative Eckre:

Thank you for your letter asking whether school district-paid portions of a teacher's statutory contribution to the Teachers' Fund For Retirement (TFFR) (N.D.C.C. § 15-39.1-09) are part of "base salary" as contained in section 5 of 2001 H.B. 1344.

Section 5 of 2001 H.B. 1344 provided:

SECTION 5. If House Bill No. 1045 does not become effective, a new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Annual salary - Minimum amount. Beginning with the 2001-02 school year, the board of each school district shall provide to each full-time teacher, under contract for a period of nine months, a base salary level for the contract period equal to at least eighteen thousand five hundred dollars. Beginning with the 2002-03 school year, the board of each school district shall provide to each full-time teacher, under contract for a period of nine months, a base salary level for the contract period equal to at least twenty thousand dollars.

However, because 2001 H.B. 1045 did become effective, the condition precedent to section 5 becoming effective never occurred. Instead, section 12 of 2001 H.B. 1344 was enacted and approved. Section 12 provides:

SECTION 12. A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

Annual salary - Minimum amount. Beginning with the 2001-02 school year, the board of each school district shall provide to each full-time teacher, under contract for a period of nine months, a level of salary for the

contract period equal to at least eighteen thousand five hundred dollars. Beginning with the 2002-03 school year, the board of each school district shall provide to each full-time teacher, under contract for a period of nine months, a base salary level for the contract period equal to at least twenty thousand dollars.

The term “base salary” is not defined in 2001 H.B. 1344 nor in the North Dakota Century Code. Absent a definition in the Code for application to 2001 H.B. 1344, the term must be understood in its ordinary sense. N.D.C.C. § 1-02-02; Coldwell Banker-First Realty, Inc. v. Meide & Son, 422 N.W.2d 375 (N.D.1988).

The dictionary definition of “base pay” is: “Wages, exclusive of overtime, bonuses, etc.” Black’s Law Dictionary, p. 138 (5th ed. 1979).

In a case involving base salary for police and fire workers, it was held:

The phrase “base salary” is not defined in the statute. In construing a statute, where the legislature has not defined a term, the term’s ordinary meaning will be applied. In general, base salary, base pay and base wages are synonymous terms. Base pay’s ordinary meaning is a “rate or amount of pay for a standard work period, job or position, *exclusive* of additional payments, bonus, or allowances.” (Emphasis added.) Base pay is also defined as “the basic rate of pay for a particular job *exclusive* of overtime pay, bonuses, etc.” . . . (Emphasis added.)

“Base salary” is not synonymous with “remuneration” or “compensation.”

O’Haver v. City of Lubbock, 815 S.W.2d 915, 916-917 (Tex. App. 1991) (citations and footnotes omitted) (emphasis in original).

When the North Dakota Supreme Court has discussed base salary for teachers in negotiations, it has not had occasion to define the term specifically. However, discussions concerning base salary make it apparent a salary schedule amount is being considered in a vein similar to that defined in the O’Haver case. See Edgeley Educ. Ass’n v. Edgeley Public School Dist. No. 3, 256 N.W.2d 348 (N.D. 1977).

It is therefore my opinion that base salary as used in 2001 H.B. 1344 means the basic salary for teachers for the work period in question prior to any adjustment by other payments or fringe benefits. It is recognized that other definitions of salary or compensation exist, such as the calculation of salary for purposes of the TFFR pursuant to a definition of salary in N.D.C.C. ch. 15-39.1 and N.D.A.C. § 82-02-02-01(8). See 1990 N.D. Op. Att’y Gen. F-27. However, “salary” for TFFR purposes does not control the meaning of “base salary” for teachers as used in 2001 H.B. 1344. By the clear wording of

the statute, the definition of “salary” in the TFFR chapter applies to that chapter only. “Base salary” in 2001 H.B. 1344 is the same whether or not the employer pays the employee’s contributions to the TFFR.

An incidental issue arises over the use of the words “level of salary” rather than “base salary level” in section 12 of 2001 H.B. 1344 in reference to the 2001-2002 school year. Because the meaning of this language when it is related to the remainder of the section is ambiguous, extrinsic aids to interpretation may be employed. N.D.C.C. § 1-02-39; Kroh v. American Family Ins., 487 N.W.2d 306 (N.D. 1992). Legislative history for 2001 H.B. 1344 discloses that the “level of salary” language ended up in the bill due to clerical error in updating numerous drafts of amendments to the bill. On April 26, 2001, the conference committee on 2001 H.B. 1344 discussed amendments to the bill prepared for Senator Freborg (L.C. Doc. No. 10245.0635). Sections 5 and 14 of that set of amendments dealt with the minimum annual pay for teachers as follows:

Annual compensation - minimum amount. Beginning with the 2001-02 school year, the board of each school district shall provide to each full-time teacher, under contract for a period of nine months, a level of compensation for the contract period equal to at least twenty thousand dollars.¹

Those amendments, referring to a “level of compensation” rather than a “base” level or a level of “salary,” failed to pass.

The amended bill that was finally passed and approved contained the teacher minimum salary provisions that were derived from amendments prepared for Representative Brusegaard (L.C. Doc. No. 10245.0801). The final bill in sections 5 and 12 refers to minimum annual salary four times. Three out of those four references use the term “base salary” while one of those references uses the term “level of salary.” Legislative discussions appearing in committee minutes concerning these provisions do not explain the use of the term “level of salary” in section 12. Therefore, because of its similarity to the phrase “level of compensation” used in the amendments prepared for Senator Freborg noted above, it appears that working with two sets of amendments caused an error. Legislative committee minutes also make it apparent that the intent of the Legislature was to set a base salary minimum and not to set a minimum calculated in different ways for each of the two years of the biennium.

The North Dakota Supreme Court has held:

¹ Two amending sections were used in the alternative in these amendments and others with respect to 2001 H.B. 1344 and other education-related bills, so the subject matter would become law whether or not 2001 H.B. 1045 became law.

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Where it is manifest upon the face of a statute that an error has been made in words, numbers, grammar or punctuation, the court, in construing and applying the statute, will correct the error in order that the intention of the Legislature as gathered from the entire act may be given effect.

Schnaible v. City of Bismarck, 275 N.W.2d 859, 867, n.2 (N.D. 1979) (quoting City of Dickinson v. Thress, 69 N.D. 748, 290 N.W. 653 (1940)).

In the circumstances involving 2001 H.B. 1344, the ambiguity over the language in section 12 of the bill must be resolved to give effect to the legislative intent as shown in the legislative record. It is therefore my opinion that both minimum salary amounts for teachers in section 12 of 2001 H.B. 1344 mean a "base salary" level as described above.

Sincerely,

Wayne Stenehjem
Attorney General

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