OPINION
53-85

July 27, 1953 (OPINION)

OASIS

RE: Deductions - When Applicable

This is in reply to your letter in which you ask for an opinion on subsection 3 of section 52-0915, to the 1953 Session Laws as follows:

> . Deductions, in such amounts and at such time or times as the bureau shall determine, shall be made from any payment or payments under this chapter to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits for any month in which:
>
> (3) Such individual rendered services for the state of North Dakota or any of its political subdivisions or instrumentalities for wages of seventy-five dollars or more."

You state an opinion was issued previously by the Attorney General's office in which it was determined that an individual was not considered retired for any month in which he has earnings from covered employment. You then ask "will the new law which becomes effective July 1, 1953, quoted above, change or amend the earlier opinion."

The enactment of subsection D would amend the opinion and would substantially be "an individual is not considered retired for any month in which he has earnings of $75 or more from any of the political subdivisions or instrumentalities of the state of North Dakota". You specifically ask for an opinion on the following set of facts,

> John Doe qualified for benefits by reason of having been employed by a State department. He retires and receives monthly benefits. One year later he is elected to a county position. Since elected positions are exempt from coverage (Section 52-0920 subsection M) he is considered retired and continues to draw the retirement benefit. What effect does the new law have after July 1, 1953, (1) if he was elected to that position before July 1, 1953, or (2) if he was elected to that position after July 1, 1953?"

Generally it is presumed that a statute or amendment thereof operates prospectively only, unless the contrary is explicitly, positively and unmistakably shown.

In dealing with the substantial issues involved in this question the court in tate ex rel Stringer v. Lee, 2 So. 2d), 127, quoted from a case in 197 NE 260.

> Where the statutory conditions for retirement existing when

> application is made have been met and the award or pension or benefit has been made or as of right should have been made the interest becomes vested and takes the attributes of a contract which in the absence of statutory reservation, may not be diminished or otherwise adversely affected by the subsequent legislation."

The court supplemented this by saying,

> The weight of authority is to the effect that when a government, by statute, once establishes a compensation or retirement system for its said officers or employees and provides in part the funds and means for administering it according to the terms thereof and any such officer or employee contributers money over a period of years and contributions are placed to the credit thereof and the officer or employee has served the public or government for the designated period of years or while serving attains a certain age or becomes mentally or physically disabled while so serving and when the conditions arise or occur upon which by the rules and regulations of the system the said officer or employee becomes eligible for retirement and to receive funds to be paid out of said compensation retirement fund and the said officer or employee having met all the requirements of the act creating the retirement system, then the said officer or employee has acquired a vested right under the terms of said statute which establishes a contractual relation which may not be affected or adversely altered by subsequent enactments."

I do not believe the language found in subsection D, as follows,

> Deductions, in such amounts and at such time or times as the bureau shall determine, shall be made from any payment or payments under this chapter to which an individual is entitled until the total of such deductions equals such individuals benefit or benefits only for any month in which * * *"

contains a statutory reservation so as to diminish or otherwise adversely affect a vested right by subsequent legislation.

I therefore conclude that John Doe, who qualified under the existing law at the time of receiving benefits, would not be affected by subsection D3 quoted above; however, an individual similarly situated and otherwise qualified making application on July 1, 1953, or sometime thereafter, if he is receiving any remuneration or wage in the sum of $75 or more from any political subdivision or instrumentality, would not qualify to receive retirement benefits from the OASIS.

In referring to political subdivisions or instrumentalities in subdivision D 3, we do not find that a qualified meaning is applicable to the terms "political subdivisions" and "instrumentalities" so as to mean only political subdivisions or instrumentalities who participate in the OASIS Act. In the absence of such qualifications we must give these terms their ordinary meaning and conclude that any person otherwise qualified but who receives $75 or more per month in form of wages or remuneration from

any political subdivision or instrumentality whether they participate in the Act or not or is considered covered employment is disqualified from receiving any benefits from the OASIS Act.

You also asked for an opinion on the following set of facts,

> John Smith qualifies for benefits from employment for a city that alter adopts a city pension plan. After adoption of the city pension plan the employees are no longer working or have earnings in covered employment. Therefore, some of its employees are considered retired and become eligible and receive benefits. Will the new law disqualify them from drawing benefits after July 1, 1953, assuming the employee has earnings of more than $75 per month?"

Applying the rule laid down by the court in Stringer v. Lee, cited above, the new law, subsection D3 which went into effect July 1, 1953, will not disqualify John Smith, if he otherwise qualifies.

We conclude here that subsection D3 does not specifically, explicitly or positively show that it is to operate retroactively and thus its effect shall be only prospective and will affect only individuals who are seeking to qualify subsequent to July 1, 1953.

It is further concluded that John Smith had met the qualifications at the time of making the application and which rights have been vested and the legislative enactment in subsection D of section 52-0915 (chapter 301) of the 1953 Session Laws does not disturb such vested right.

ELMO T. CHRISTIANSON

Attorney General