

**N.D.A.G. Letter to Ozbun (May 9, 1991)**

May 9, 1991

Mr. Jim Ozbun  
President  
North Dakota State University  
PO Box 5167  
Fargo, ND 58105-5167

Dear Mr. Ozbun:

Thank you for your March 26, 1991, letter requesting an opinion concerning the applicability of retirement and health benefits to certain "pool position" employees at North Dakota State University.

Eligibility for participation in the North Dakota Retirement Program and the Uniform Group Insurance Program is determined by reference to state statute. To be eligible to participate in either the retirement or health program and have the employer pay the employee's contribution, an employee must be a "permanent employee." Under both the retirement and health insurance programs a permanent employee is one whose services are not limited in duration, who is employed at least five months in a year, and who is filling an approved and regularly funded position. In addition, to participate in the health insurance program the employee must work at least 17½ hours per week. N.D.C.C. § 54-52.1-01(4). To participate in the retirement program the employee must work at least 20 hours per week. N.D.C.C. § 54-52-01(10). Whether an employee is employed 5 months out of a 12-month period or works 17½ or 20 hours per week is easily ascertainable. The determination of the 5 month each year standard is calculated based on 12 consecutive months from the first date of employment and not a calendar year, or the University's fiscal year.

Whether an employee is filling a position which is unlimited in duration or is filling an approved and regularly funded position is more difficult to ascertain. In a March 26, 1991, letter to Mr. Gary Jallen, director of Payroll and Personnel at North Dakota State University, a member of my staff determined that the employees in question did not fit either of these requirements. I am enclosing a copy of that letter for your information. I concur with this conclusion.

It is my opinion that because pool positions at the North Dakota State University are not approved and regularly funded positions nor unlimited in duration as contemplated by N.D.C.C. §§ 54-52-01(18) and 54-52.1-01(9) such persons do not qualify for participation in either the pension or health benefit programs. It is my further opinion that although on occasion these pool position employees may work more than 17½ hours per week or more than five months per year, because they do not meet the unlimited duration or the regularly funded position requirements, they do not meet the requirements for participation in the health insurance and retirement programs.

I trust this answers your question.

Sincerely,

Nicholas J. Spaeth

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Enclosure