

**OPINION
49-60**

August 19, 1949 (OPINION)

FARGO POLICE PENSION ORDINANCE

RE: Rights of Withdrawal

Re: Chapter 40-45 R.C. 1943

Yours of the 17th inst. re Fargo Police Pension Ordinance has been received and referred to my desk.

The Legislature had undoubted authority to enact chapter 40-45 found in the North Dakota Revised Code of 1943.

We find no authority in section 40-0501 or 40-0502 N.D.R.C. giving cities any authority to enact ordinances relating to a pension system for the city. The only law relating to police pensions, therefore, is chapter 40-45.

McQuillin says: "Moreover, general power to enact ordinance is to be restricted to the legislative powers committed to the particular municipality. Its exercise must conform to the grant of power, that is, to say that ordinances must be within the powers expressly or impliedly conferred. The power will not be extended beyond the meaning of the words granting the power. Furthermore, whatever the grant of power in terms, ordinances must not be inconsistent with the laws of the nation or state.* * *"

McQuillin Corporations, 2d Ed. Rev. Vol. 2, Sec. 708, p. 745.

Therefore, the city may not grant rights under an ordinance in excess of those granted by the law authorizing the ordinance.

It is our opinion that no right granted by chapter 40-45 can be extended or taken away by ordinance. This chapter provides for a police pension in cities. It defines and limits the rights of members. When a city, authorized to do so by chapter 40-45, has made a levy therefor to take advantage of the power granted by said chapter, there is a contractual relation between the city and its policemen.

Payne v. Teachers' Retirement Fund, ____N.D. ____, 35 N.W.2d. 553.

Membership in the fund is compulsory. Section 40-4508. Each policeman shall pay a membership fee, and the city thereafter deducts and retains from his salary his prescribed assessment of two percent of his salary. This constitutes his contributions to the fund to which every other policeman must contribute in like manner. Each member then has a vested contract interest in the fund. The statute, section 40-4521, provides the only circumstances under which he may withdraw, and the amount of his refund upon his exercise of the right to withdraw given by this section. He may not withdraw a greater sum than this statute authorizes, even though an ordinance so provides, for such a provision clearly conflicts with the statute. The statute

and not the ordinances defines the rights of members.

Therefore, it is our opinion that the two members of your force may not withdraw any sum from the fund under the provisions of said section 40-4521 and still continue as members of your police force.

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Attorney General