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## Digest of Attorney General Opinions

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## DIGEST OF ATTORNEY GENERAL OPINIONS

MOTOR VEHICLES — BUSES ARE GOVERNED BY PASSENGER VEHICLE  
SPEED LAW

May 16, 1957

Subsection 32 of section 1 of chapter 237 of the North Dakota 1955 Session Laws describes a bus as a motor vehicle designed to carry more than ten person. Therefore buses insofar as speed limits are concerned are governed by the law applicable to passenger vehicles as set forth in subsection 8, section 39-0902 of the North Dakota 1955 Session Laws.

MUNICIPAL OFFICERS — DETERMINATION OF VACANCY ON BOARD  
OF TRUSTEES

March 21, 1957

Where no one ran for office of village trustee at the last election, no vacancy occurred which could be filled by appointment under section 40-0719 of North Dakota Revised Code of 1943. Members of the board of trustees hold office until the third Tuesday in March following, *or* until their successors are elected and qualified. (§ 40-1710 N. D. Rev. Code 1943).

REAL ESTATE TAXES — CONCESSIONS APPLICABLE TO PERSONS IN THE  
ARMED FORCES

May, 15, and 23, 1957

A serviceman in the armed forces can not postpone payment of real estate taxes. Since the Presidential Proclamation of 1946 declaring the cessation of hostilities, Sections 57-4605 through 57-4608 of the North Dakota Revised Code of 1943 are no longer in force. Of course the Soldiers' and Sailors' Relief act of 1940, as amended, must be recognized and the leave of the court must be obtained in obtaining tax titles to the real estate of a person in the armed forces.

RETIREMENT — ELIGIBILITY OF STATE CHARITABLE AND PENAL  
INSTITUTION EMPLOYEES TO RETIREMENT PAY

April 4, 1947

The intent of Senate Bill 45 of the 1957 Legislative Assembly is that the provisions of the retirement program are no longer in effect after July 1, 1957, and only those individuals who are actually receiving pensions or have met all of the qualifications are eligible

for such retirement benefits. The term "eligible for retirement" under Section 54-2353 of the 1953 Supplement to the North Dakota Revised Code of 1943 means that the employee must have retired or submitted his name for retirement prior to July 1, 1957. A person who continues to work at a state institution until sometime subsequent to July 1, 1957 is not eligible. Where a person has met the other requirements but has not attained the age of sixty-five prior to July 1, 1957, he is not eligible for retirement pay upon reaching the required age.

Where an employee had applied for and received retirement pay, subsequent re-employment and drawing of wages from the institution disqualified the individual from retirement pay. To qualify under Sections 54-2353 and 54-2354 of the 1953 Supplement of the North Dakota Revised Code of 1943, an individual must be retired in fact since no provisions are made for partial retirement.

#### SOCIAL SECURITY — ELECTION OF GROUP IS BINDING ON INDIVIDUAL EMPLOYEE

April 5, 1957

Under federal and state legislation employees as a group may elect by referendum whether or not they wish to be covered under Federal Social Security and whether or not to make such coverage retroactive to January 1, 1956. Once such an election is made it applies to all employees of the group as a single unit. Should the election be only to make the coverage retroactive to a certain date, an individual has no choice to take further retroactive coverage but must follow the selection made by the group. Therefore, if an individual teacher does not wish retroactive coverage he may resign his position.

#### TEACHERS PREPARATION SCHOLARSHIPS — FULFILLMENT OF REPAYMENT OBLIGATION

May 1, 1957

The state board of public education is authorized to make rules and regulations for the administration and operation of the teacher scholarship law. (N. D. Rev. Code § 15-5702 1953 Supp.) This board cannot promulgate rules affecting substantive rights and therefore cannot require that scholarship recipients must teach in home county or obtain a release therefrom before teaching time can be applied to the discharge of the notes. Since the teacher scholar-

ship law does not provide that a teacher must teach in the county where he resides and from which he is certified, the legislature intended that he might teach in any rural school in this state, and thereby fulfill his obligation under the law.

Section 15-5708 of the 1953 supplement to the North Dakota Revised Code has been amended to the extent that a teacher under a second year scholarship may teach in any public school rather than only a rural school.

Teachers who were granted scholarships in 1956 and entered into repayment agreements for the 1956-57 school year are bound by the law as it existed at that time.

