

1007

BUS DRIVERS—BOARDS OF EDUCATION—MAY NOT BE COMPELLED TO MAKE CONTRIBUTIONS TO SCHOOL EMPLOYEES' RETIREMENT SYSTEM FOR BUS DRIVERS—AT PRIOR TIME IT WAS OPTIONAL AS TO MEMBERSHIP—DRIVERS NOT MEMBERS OF SYSTEM.

## SYLLABUS:

Boards of education may not be compelled to make contributions to the School Employes' Retirement System to enable bus drivers, whose membership therein at a prior time was optional and who were not then members of the retirement system, to make up for such period of time when membership was optional.

Columbus, Ohio, September 22, 1949

Hon. Wray Bevens, Prosecuting Attorney  
Pike County, Waverly, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

"I would appreciate it sincerely if you would advise me as to the law of Ohio with respect to the following proposition:

In 1938 certain boards of education in this county failed to make deductions from bus drivers salaries for school employees retirement. At that time the bus drivers in question were receiving a net annual salary of less than five hundred dollars. One of these drivers has applied to the School Employes Retirement System for permission to make up two years and two months during said period of time when no deductions were withheld. In view of the fact that if other bus drivers would make similar requests the boards of education would be compelled to expend considerable sums of money. Is it possible under the laws of Ohio for these bus drivers to compel the boards of education to make the necessary contributions for the periods of time when no deductions were withheld?"

The State Public School Employes' Retirement System is provided for by Sections 7896-64 to 7896-130 of the General Code of Ohio. Section 7896-89 provides as follows:

“The retirement board, notwithstanding the foregoing provisions, may deny the right to become members to any class of employes whose compensation is only partly paid by the state, or who are on a temporary basis and it may also, in its discretion, make optional with employes in any such class their individual entrance into membership.”

Pursuant to the above provision of the General Code the School Employes Retirement Board, during the period of time referred to in your inquiry, made membership in the retirement system optional with employes you have described. Recently, however, the retirement board, by resolution, under authority of Section 7896-64, General Code, has classified such employes as regular employes, thereby compelling membership in the system.

It has been the policy of the retirement board to accept individual applications of its members to make up back contributions for the period during which membership in the system was optional when such applications are consented to by the employing board and accompanied by payment of both the employers and employes proportionate contributions for such period. There is no provision of law or regulation of the retirement board which would compel a board of education to make the necessary contributions to the retirement system to cover prior periods of time when membership of its employes was optional with such employe.

In specific answer to your question you are advised that it is my opinion that boards of education may not be compelled to make contributions to the School Employes' Retirement System to enable bus drivers, whose membership therein at a prior time was optional and who were not then members of the retirement system, to make up for such period of time when membership was optional.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.