

718

1. RETIREMENT SYSTEM, PUBLIC EMPLOYEES—EMPLOYEE MEMBER SIXTY-NINE YEARS OF AGE OR OVER—MAY BE CONTINUED IN PUBLIC SERVICE UNDER SECTION 486-59 G. C.
2. A PERSON RETIRED AS A SUPERANNUATE AND RE-EMPLOYED PRIOR TO SEPTEMBER 1, 1948, SHALL BE CONSIDERED A NEW MEMBER AND BE ENTITLED TO ALL PRIVILEGES AND SUBJECT TO ALL OBLIGATIONS OF THE SYSTEM.

## SYLLABUS:

1. An employe member sixty-nine years of age or over may be continued in public service pursuant to Section 486-59 of the General Code, as amended by the 98th General Assembly.

2. Any person who had retired in the public employes retirement system as a superannuate and was re-employed prior to September 1, 1948, shall be considered a new member of the retirement system, and be entitled to all the privileges and subject to all obligations thereof.

Columbus, Ohio, July 12, 1949

Hon. Reeder C. Hutchinson, Prosecuting Attorney  
Defiance County, Defiance, Ohio

Dear Sir:

This is to acknowledge receipt of your letter requesting my opinion; which reads as follows:

"A number of persons over seventy years of age are employed in various capacities by Defiance County, and I have been asked whether after June 30, 1949, these persons employment can be legally continued. I have examined G. C. 486-59 and 486-63B. While language appears in G. C. 486-59, particularly the last part of the second paragraph, which states 'shall be ineligible for regular reemployment in any capacity which comes within the provisions of the public employees retirement act,' nevertheless certain language in 486-63B seems to indicate that such employment is possible but merely prohibits the employee from receiving benefits under the retirement act during such employment. However, because I am unsure of my conclusion, I respectfully request your opinion on the following question :

"1. May a person of seventy years of age be legally employed by Defiance County and be legally paid a salary for such employment after June 30, 1949?

"2. If the answer to question number one is in the affirmative, what is his status with reference to the public retirement fund?"

It is to be noted that the specific questions asked do not pertain to Section 486-63b of the General Code, but since said section was mentioned in other parts of your letter, and in order to clarify any doubt in your mind as to the effect that said section would have on present employees of the age of seventy or over, I wish to call your attention to an opinion given by my immediate predecessor, Opinions of Attorney General 1948, No. 3485, the first paragraph of the syllabus in which I concur reads :

"Under the provisions of Section 486-63b, General Code, one who has retired in the Public Employes Retirement System as a superannuate, may be reemployed not later than September 1, 1948."

Assuming that the persons over seventy years of age were superannuates and were re-hired prior to September 1, 1948, the provisions of the latter part of Section 486-63b, General Code, becomes significant as to their status within the purview of the public retirement fund :

*"When a superannuate is re-employed as provided herein, he shall become a new member of the retirement system and shall have all rights and privileges and be charged with all obligations of such membership."* (Emphasis added.)

Among the rights and obligations to which superannuates would become entitled, and subject under the provisions of Section 486-63b, would

be that provision of Section 486-59, General Code, as amended by the 98th General Assembly, which relates to an employe member sixty-nine years of age or over, or one who thereafter reaches that age. Section 486-59 of the General Code, as amended by the 98th General Assembly, reads as follows:

“On and after January 1, 1939, any member, except a new member with less than five years of service, who has attained sixty years of age, may retire by filing with the retirement board an application for retirement. The filing of such application shall retire such member as of the end of the quarter of the calendar year then current.

“On June 30 following the date upon which he becomes a member the retirement board shall retire any employe who was over seventy years of age at the time he became a member and shall retire all other members, except elective officers, on the June 30 following the date upon which the age of seventy is attained. Provided, that until June 30, 1950, any member having reached the age of sixty-nine years or more may, upon written application approved by the head of his department, board, authority or institution, and upon certification by a physician licensed to practice in the state of Ohio that the member is physically and mentally competent to perform the duties of the particular position which he occupies, be continued in service for a period of one year or any part thereof, such application, if approved, to expire on the June 30 following the date upon which it was filed, unless renewed from year to year on or before the expiration date. Any member who accepts an allowance under sections 486-59, 486-60 or 486-61 of the General Code, or who is compelled to retire and who withdraws his accumulated contributions in lieu of accepting a retirement allowance shall be ineligible for regular re-employment in any capacity which comes within the provisions of the public employes retirement act.

“Any former member who is receiving a monthly retirement allowance as provided in section 486-60, General Code, and providing such former member was seventy or more years of age at the time of retirement, shall have his retirement allowance adjusted to become effective as of the end of the quarter of the calendar year next following the date the public service of such member was terminated.

“In the event any retired pensioner, after such retirement, is elected to a full-time salaried office by the electors of the state or any political subdivision thereof, at any election, such pensioner, by the acceptance of any such office shall forfeit his pension during the period such pensioner so holds such office and receives the salary therefor.”

In view of the foregoing, it is therefore my opinion that :

1. An employe member sixty-nine years of age or over may be continued in public service pursuant to Section 486-59 of the General Code, as amended by the 98th General Assembly.

2. Any person who had retired in the public employes retirement system as a superannuate and was re-employed prior to September 1, 1948, shall be considered a new member of the retirement system, and be entitled to all the privileges and subject to all the obligations thereof.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.