

Note from the Attorney General's Office:

1948 Op. Att'y Gen. No. 48-3893 was modified by 1962 Op. Att'y Gen. No. 62-3202.

3893

POLICE RELIEF AND PENSION FUND:

1. MUNICIPAL CORPORATION — POLICE OFFICER EMPLOYED FOR PART TIME SERVICE—IF OFFICER HAS OTHER QUALIFICATIONS REQUIRED BY LAW FOR EMPLOYMENT AS POLICE OFFICER, HE IS ENTITLED TO MEMBERSHIP IN PENSION FUND—SECTION 4616 G. C.
2. WHEN PART TIME POLICE OFFICER HAS BEEN A REGULAR MEMBER OF POLICE AND PENSION FUND AND CONTRIBUTED TO FUND SINCE 1941 UP TO SEPTEMBER 25, 1947, HE IS ENTITLED TO PARTICIPATE IN BENEFITS OF FUND—H. B. 195, 97 GENERAL ASSEMBLY.
3. SECTION 4628 ET SEQ., G. C. GOVERNS BENEFITS TO WHICH MEMBER ENTITLED REGARDLESS OF FACT HE IS PART TIME OFFICER.

SYLLABUS:

1. Where a municipal corporation has established a police relief and pension fund pursuant to the authority of Section 4616, General Code, and employs a police officer for part time services only, which is equivalent to two-thirds of the time regularly worked by the full time police officer, such part time officer, if he has the other qualifications required by law for employment as such police officer, is entitled to membership in the police relief and pension fund.

2. When such part time police officer has been a regular member of the police relief and pension fund and has contributed to said fund since 1941, up to September 25, 1947, the effective date of House Bill No. 195 of the 97th General Assembly, he is entitled to participate in the benefits of such fund.

3. The benefits to which a member of the police relief and pension fund is entitled are governed by Section 4628 et seq. of the General Code, and he is entitled to the benefit of the provisions therein contained, regardless of the fact that he is a part time officer.

Columbus, Ohio, October 14, 1948

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your communication in which you request my opinion, your request reading as follows:

“Section 4616, General Code, reads in part as follows :

‘In each municipal corporation having a police department supported in whole or in part at public expense, and employing two or more full time regular members, there shall be established and maintained a police relief and pension fund.’

“We are unable to find any reference in the law to part-time police officers or authority for such part time employes to participate in the benefits of the Police Relief and Pension fund established under authority of Section 4616, General Code.

“Since the question of eligibility of part time police officers to become members of the local Police Relief and Pension fund, is of state wide interest, we respectfully request your consideration of and Opinion in answer to the following questions :

“Question No. 1 — Where a municipal corporation having established a Police Relief and Pension fund pursuant to the authority of Section 4616, General Code, employs a police officer for part time service only, which is equivalent to two-thirds of the time worked by the regular full time police officers, is such part time officer properly qualified for membership in the Police Relief and Pension fund?

“Question No. 2 — When such part time police officer has been a member of the police department and contributed to the Police Relief and Pension fund since the year 1941, is such part time police officer entitled to participate in the benefits of said fund?

“Question No. 3 — If such part time officer is entitled to receive the benefits of the Police Relief and Pension fund, then, to what extent can he participate? Is he entitled to full pension or only two-thirds of the amount specified by law?”

In House Bill No. 195 passed by the 97th General Assembly, the laws relating to police and firemen’s pension systems were practically rewritten. This is particularly true of those sections relating to the police relief and pension system, to wit, Sections 4616 to 4631-3, both inclusive, of the General Code.

Section 4616, General Code, prior to that amendment, authorized but did not require the council of a municipality having a police department supported in whole or in part at public expense, to establish a police relief and pension fund. Nothing was said in that statute relative to the character of the service of the police officers, whether full time or part time or both. However, since the board of trustees of the fund was to include two members of the police department, it seems fair to assume that at least that

number was requisite to the establishment of the fund. In the amendment of this section by House Bill No. 195, it was made to read in part as follows :

“In each municipal corporation having a police department supported in whole or in part at public expense, and *employing two or more full time regular members*, there shall be established and maintained a police relief and pension fund.”

(Emphasis added.)

Here, it will be noted, was introduced the requirement that the fund must be established when there are employed in the police department *two or more full time regular members*. This is the only reference so far as I can find, to “full time, regular members,” in any of the sections now or heretofore in force relative to a police pension fund or to the police relief and pension fund, as it is now called, and there is no reference whatsoever in any of such statutes to part time policemen or part time members of a police department. Section 4625, General Code, provides in part as follows :

“In each municipal corporation, in which there is or hereafter may be established a police relief and pension fund, the treasurer of the municipal corporation shall deduct from the salary of *each member of the police department* an amount equal to four per centum of his salary for each payroll period. The sums so deducted shall be credited to the police relief and pension fund of the municipal corporation.”

(Emphasis added.)

The words “each member,” taken in their natural meaning, will include a part time policeman as certainly as a full time officer.

In the general statutes relating to municipal corporations, there are provisions which have been in force for many years relative to the establishment of the police department and fire department in municipalities, both cities and villages. Section 4374, General Code, makes the following provision as to the composition of the police department of a city :

“The police department of each city shall be composed of a chief of police and such other officers, patrolmen and employes as council shall, from time to time, provide by ordinance.”

Nothing in this section suggests any limitation to full time police officers. Nor do the civil service statutes under which policemen must be appointed contain any such limitation. The civil service of the state

unquestionably includes many employes in various departments who are employed for part time only. Section 486-1, General Code, defines civil service as including "all offices and positions of trust and employment in the service of the state and the counties, cities and city school districts thereof"; and Section 486-8, General Code, divides the "civil service" into the classified and unclassified service. The statutes relative to appointment and removal of all employes falling within the classified service including policemen and firemen, make no distinction between full time and part time employes.

Section 4378, General Code, provides in part :

"The police and fire departments in every city shall be maintained under the civil service system, as provided in this subdivision."

The sections which immediately follow, make provision as to the suspension or removal of "any of the deputies, officers or employes" in the police department. There is a provision in Section 4373, General Code, authorizing the appointment of temporary emergency patrolmen "who need not be in the classified service." But they are to be employed only for the time during which the emergency exists, and they are clearly not to be considered as "part time" police officers.

In the enactment of the new provisions relative to the police relief and pension fund, the General Assembly saw fit to adopt certain definitions which as stated are to govern in all of the sections relating to the police relief and pension fund. Section 4631-3, General Code, reads as follows :

"The following words and phrases as used in sections 4616 through 4631-2 of the General Code, both inclusive, shall have the following meanings :

"1. 'Member of the police department' shall mean any person who receives an original appointment as a policewoman, policeman or police matron from a duly established civil service eligible list or who is appointed to a position in a police department pursuant to section 4384 or 4384-1 of the General Code or who, on the effective date of this act, is contributing two per cent of his annual salary to a police relief and pension fund established pursuant to the provisions of section 4616 of the General Code.

"2. 'Member of the fund' shall mean any person who is contributing four per cent of his annual salary to the police relief and pension fund or who is receiving a pension or disability benefits

from a police relief and pension fund, established pursuant to the provisions of section 4616 of the General Code, as a result of service in the police department.”

It will be observed here that this definition of “member of the police department” is somewhat narrower in its scope than Section 4374 supra, in that it includes only police women, policemen and police matrons and would appear to exclude other employes of the department who do not have the status of either of these three.

It will be observed further that this definition is broad enough to include police officers who may work part of the day or part of the days of the week, as well as those who are employed for full time.

That the general assembly did not intend to confine the definition of “member of the police department” to full time members is indicated by the provisions of Section 4615-13, General Code, which was contained in the same act. In this section which relates to the newly created township firemen’s relief and pension fund “member of the fire department” is defined as follows :

“ ‘Member of the fire department’ shall mean any person who, on April 1, 1947, was employed by a township as a *full time regular fireman* in a township fire department established pursuant to sections 3298-54 et seq., of the General Code and ‘member of the fire department’ also shall mean any person over twenty-one and under thirty years of age who after April 1, 1947, is employed by a township as a *full time regular fireman* in a township fire department.” (Emphasis added.)

In conditioning the establishment of a police relief and pension fund on the existence of two full time regular policemen, it does not appear to me that any implication arises which requires carrying that same limitation into the section defining the qualifications for membership.

I can see no reason why a man who is regularly employed in police duty for four or six hours per day or for three or four days each week is not as certainly a member of the police department as one who is employed for a maximum of eight hours a day or six days per week.

In Opinion No. 2327 rendered October 23, 1947, I was asked, among other questions, the following :

“What is the status of an individual who receives the major portion of his remuneration from a municipality or township for

service other than as a fireman, policeman or marshal, but who is employed as a fireman, policeman or marshal for a few hours in the evening?"

In answer to that question, it was stated as shown by the 5th branch of the syllabus:

"Under the provisions of Section 4600 et seq., General Code, relating to police and firemen's relief and pension funds, only full time regular policemen or firemen come within the provisions of either of such funds."

Upon reconsideration of that question, I am still of the opinion that the conclusion stated was correct in so far as relates to membership in a township firemen's relief and pension system, but it was too broad in including members of municipal police and fire funds, and it is accordingly to that extent modified.

In a later opinion, No. 2645, rendered January 26, 1948, the status of part time or volunteer firemen was discussed at length, and it was pointed out that they may become members of the fire department and members of the fund, as defined in Section 4615-1, General Code, and subject to the obligations and entitled to the benefits of the law relative to the firemen's relief and pension system.

The benefits to which a member of the fund is entitled are set forth in Sections 4628 and 4628-3, General Code. In general they are based upon years of service and average salary received during a stated term. There is nothing in these sections referring either to full time or part time employes, and nothing which would result in giving them only a fractional portion of the named benefits. It is obvious that since a part time policeman would normally receive a smaller salary than a full time officer, his benefits would be smaller.

Accordingly, in specific answer to your questions it is my opinion:

1. Where a municipal corporation has established a police relief and pension fund pursuant to the authority of Section 4616, General Code, and employs a police officer for part time service only, which is equivalent to two-thirds of the time regularly worked by the full time police officer, such part time officer, if he has the other qualifications required by law for employment as such police officer, is entitled to membership in the police relief and pension fund.

2. When such part time police officer has been a regular member of the police relief and pension fund and has contributed to said fund since 1941, up to September 25, 1947, the effective date of House Bill No. 195 of the 97th General Assembly, he is entitled to participate in the benefits of such fund.

3. The benefits to which a member of the police relief and pension fund is entitled are governed by Section 4628 et seq. of the General Code, and he is entitled to the benefit of the provisions therein contained, regardless of the fact that he is a part time officer.

Respectfully,

HUGH S. JENKINS,

Attorney General.