

1290.

STATE TEACHERS' RETIREMENT SYSTEM—BOARDS OF EDUCATION  
REQUIRED TO PAY TO FUND BOTH NORMAL AND DEFICIENCY  
CONTRIBUTIONS MENTIONED IN SECTION 7896-44 G. C. ONLY  
UPON THOSE TEACHERS WHO ARE MEMBERS OF RETIREMENT  
SYSTEM.

*Under the provisions of section 7896-44, boards of education are required to pay to the employers' accumulation fund of the state teachers' retirement system, both the normal contribution and the deficiency contribution mentioned in such section only upon those teachers who are members of the retirement system and come within the class defined as "contributors" to such system.*

COLUMBUS, OHIO, May 28, 1920.

HON. ROBERT E. MARSHALL, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter requesting the opinion of this department upon the following two questions:

1. "Under section 7896-44, pertaining to the retirement system of teachers, may a board of education, who has no teacher employed that is a member of the retirement system, claim exemption from payment to the employers' accumulation fund of the normal contribution?"

2.—Also, may the board of employing teachers who are not members of the retirement system and who have requested exemption for themselves, claim exemption from the payment to the deficit contribution provided for in said section?"

Section 7896-44, which you cite, reads as follows:

"Each employer of a teacher who is a member of the retirement system shall pay to the employers' accumulation fund a certain per centum of the earnable compensation of each such teacher to be known as the 'normal contribution' and a further per centum of the earnable compensation of each such teacher to be known as the 'deficiency contribution.' The amount paid by an employer on account of the deficiency contribution shall after the first payment be at least three per centum greater than the amount paid by him during the preceding year. The rates per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system and shall be certified to the employers by the retirement board after each actuarial valuation. Until the first such certification, the normal contribution shall be two and eight-tenths per centum of the members' salaries and the deficiency contributions shall be two and seventy-seven hundredths per centum of the members' salaries."

It will be noted in the above section that the requirement is that the employer who is to pay either the "normal contribution" or the "deficiency contribution" to the employers accumulation fund must be an employer of a teacher *who is a member of the retirement system* and thus if there was a teacher employed by the board of education and such teacher was not a member of the retirement system, then such

employer would not be compelled under section 7896-44 to make any contribution on behalf of such non-member teacher. It may be said that the only teacher who would not be a member of the state retirement system would be a teacher coming within the exceptions set out in section 7896-22 G. C. That is to say, all teachers in the public schools in service on the first day of September, 1920, except those teachers who had filed with their employer at that time or prior thereto a statement in writing, requesting exemption from membership; would constitute the membership of the state retirement system, unless such teachers were members of a local district pension system heretofore established under the laws of this state. Other sections of the teachers' retirement law which sustain this view of the matter appear to be as follows:

"Section 7896-45: \* \* \* After the deficiency contribution has ceased to be payable, the normal contribution shall be the rate per centum of the earnable salary of *all contributors* obtained by deducting from the total liabilities of the employers' accumulation fund of the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salary of *all contributors* as computed on the basis of the mortality and service tables adopted by the retirement board and on regular interest. \* \* \*"

"Section 7896-46: Immediately succeeding the first valuation, the actuary engaged by the retirement board shall compute the percentage of the total compensation of all contributors \* \* \*."

"Section 7896-47: Each employer shall pay annually into the employers' accumulation fund, in such monthly or less frequent installments as the retirement board shall require, an amount certified by the retirement board, which shall equal the per centum of the total compensation, earnable by *all contributors* during the preceding school year. \* \* \*"

"Section 7896-48: The before mentioned deficiency contribution contributable by the employers shall be discontinued as soon as the accumulated reserve in the employers' accumulation fund shall equal the present value, as actuarially computed, and approved by the retirement board, of the total liability of such fund for the payment of pensions less the present value, computed on the basis of the normal contribution rate then in force, of the normal contributions to be received on account of *teachers who are at that time contributors.*"

"Section 7896-49: Each employer, before employing any teacher to whom this act may apply, shall notify such person of his duties and obligations under this act as a condition of his employment.

Any such appointment or reappointment of any teacher in the public day schools of the state on or after the first day of September, nineteen hundred and twenty, or service upon indefinite tenure after that date shall be conditioned upon the teacher's acceptance of the provisions of this act, as a part of the contract."

"Section 7896-50: During September of each year, or at such other time as the retirement board shall approve, each employer shall certify to the retirement board the names of all teachers to whom this act applies."

From the above sections appearing in the teachers' retirement system act, it is

apparent that an employing board of education is required to make its payments under such acts only upon those teachers "who are contributors," and in section 7896-1 the section defining the meaning of certain words says:

"'Contributor' shall mean any person who has an account in the teachers' saving fund."

It is therefore apparent that a teacher who was not a member of the state retirement system would not be a contributor, as used in the various sections of the act, and the board of education, as the employer, could not be compelled to make payments required of it for teachers who are not contributors; that is to say, members of the state retirement system.

Coming to your second question, you desire to know whether the board of education employing teachers who are not members of the retirement system, and who have requested exemption for themselves, could claim exemption from the payment to the deficiency contribution provided for in section 7896-44. The answer to this is the same as the answer to the first question propounded as to the requirements for the "normal contribution," for the section says that the employers who are to pay to the employers' accumulation fund shall be the employers of teachers *who are members of the retirement system*. The teachers for whom the board would not have to contribute would be those teachers who are non-members of the retirement system of the state, that is, those who have been properly exempted under the provisions of section 7896-22 of such act.

Based upon the sections of the statutes herein quoted, it is therefore the opinion of the attorney-general that under the provisions of section 7896-44, boards of education are required to pay to the employers' accumulation fund of the state teachers' retirement system, both the normal contribution and the deficiency contribution mentioned in such section only upon those teachers who are members of the retirement system and come within the class defined as "contributors" to such system.

Respectfully,  
 JOHN G. PRICE, ©  
 Attorney-General.

1291.

MUNICIPAL CORPORATIONS—WITHOUT AUTHORITY TO INCLUDE  
 IN COST OF SEWER SYSTEM, COST OF SEWAGE DISPOSAL PLANT,  
 FOR ASSESSMENT PURPOSES.

*Municipal corporations are without authority to include, for assessment purposes, in the cost of a sewer system, the cost of a sewage disposal plant proposed to be erected in connection with the construction of such system, even though the sewer system may not be put into operation in the absence of such plant.*

COLUMBUS, OHIO, May 28, 1920.

*The Bureau of Inspection and Supervision of Public Offices, Columbus Ohio.*

GENTLEMEN:—You have submitted for the consideration and opinion of this department a communication sent to you by the solicitor of the village of Grafton, reading in part :