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1. TEACHERS RETIREMENT SYSTEM, STATE—WHERE MEMBER LEAVES SERVICE TO ENTER ARMED FORCES OF UNITED STATES AND RETURNS TO TEACHING SERVICE WITHIN TWO YEARS AFTER EFFECTIVE DATE OF HONORABLE DISCHARGE—ENTITLED TO HAVE MILITARY SERVICE CONSIDERED AS EQUIVALENT OF PRIOR SERVICE—FOREIGN STATE—SECTIONS 7896-1a, 7896-30, G. C.
- 2.a. CONSCIENTIOUS OBJECTOR—INDUCTED INTO ARMED FORCES FOR NON-COMBATANT SERVICE—HONORABLE DISCHARGE—ENTITLED TO PRIOR SERVICE CREDIT, SECTION 7896-1a, G. C.—PERIOD OF LIMITATION.
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3. MEMBER WHO RECEIVES HONORABLE DISCHARGE AND IMMEDIATELY RE-ENLISTS—UPON RECEIPT OF SECOND DISCHARGE ENTITLED TO PRIOR SERVICE CREDIT FOR ENTIRE PERIOD OF MILITARY SERVICE—PERIOD OF LIMITATION.

4. STATUS OF TEACHER WHO LEFT ACTIVE SERVICE AS TEACHER IN OHIO SCHOOLS—RETURN—SERVICE AS TEACHER IN OHIO SCHOOLS WITHIN PURVIEW OF TEACHERS RETIREMENT SYSTEM.
5. CERTIFICATE OF SERVICE WHEREBY MEMBER OF MILITARY FORCES IS RELEASED FROM ACTIVE SERVICE—TRANSFERRED TO ARMY OR NAVAL RESERVE—EQUIVALENT TO HONORABLE DISCHARGE.

SYLLABUS:

1. A member of the state teachers retirement system who pursuant to the provisions of Section 7896-1a of the General Code, leaves his service as a teacher in Ohio to enter the armed forces of the United States, and returns to such teaching service within two years after the effective date of his honorable discharge, is entitled to have such military service considered as the equivalent of prior service, but he cannot claim such right by reason of military service which he entered while engaged in teaching in another state prior to becoming a teacher in Ohio, even though he has, pursuant to Section 7896-30 of the General Code, purchased credit for such teaching service in such other state.

2. (a) A conscientious objector, member of the state teachers retirement system who has been inducted into the armed forces of the United States for non-combatant service and has received an honorable discharge from such service, is entitled to prior-service credit under the provisions of Section 7896-1a of the General Code, provided he returns to active service as a teacher within the period therein limited.

(b) A conscientious objector who has been committed to a civilian camp for "work of national importance" and is given a certificate of release therefrom, is not entitled to the benefits of Section 7896-1a relating to prior-service credit.

3. A member of the state teachers retirement system who receives an honorable discharge from military service as contemplated by Section 7896-1a, and immediately reenlists and subsequently receives a second honorable discharge, is entitled to prior service credit for the entire period of his military service and the period within which he must return to active service as a teacher runs from the effective date of his final discharge.

4. In order to claim the benefit of Section 7896-1a of the General Code relative to prior service credit, a member of the state teachers retirement system who has left his active service as a teacher in Ohio schools, to enter military service, must return to active service as a teacher in Ohio schools which are within the purview of said system.

5. For the purpose of Section 7896-1a, General Code, a "certificate of service" whereby a member of the military forces is released from active service and is transferred to the army or naval reserve, is equivalent to an honorable discharge.

Columbus, Ohio, November 16, 1945

Mr. George M. Pogue, Secretary, State Teachers Retirement System of Ohio
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 7896-1a of the General Code of Ohio provides that members of this retirement system out of active service as a teacher by reason of having become a member of the armed forces of the United States on active duty or service shall have such service considered as the equivalent of prior service, providing the member returns to active service as a teacher within 2 years after the effective date of his honorable discharge. This section continues with a definition of the term ‘armed forces’ of the United States. The following questions have arisen in connection with certain claims and we respectfully request your opinion concerning them.

(1) A member was a teacher in the State of Michigan from September, 1915, to June, 1917, and enlisted in the United States Army September 5, 1917. He received an honorable discharge on July 12, 1919, and returned to service as a teacher in Michigan in September, 1919, where he was thus employed until June, 1921. In September, 1921, he was employed as a teacher in Ohio and his employment in this state has been continuous from that date. He recently purchased credit in accordance with Section 7896-30 of the General Code of Ohio for the 4 years of Michigan service cited above. He has also presented his claim for the Army service cited above to be recognized as military service for credit in accordance with Section 7896-1a. Is the Retirement Board required to grant him such military service credit? If so, would such credit have been required had the member purchased credit only for 2 of the 4 years of Michigan service? If the granting of such credit is not mandatory, is it permissive for the Retirement Board to grant it?

(2) If a conscientious objector receives a certificate of honorable discharge from the ‘armed forces’ of the United States, is the Retirement Board required to give service credit to such member for the period in the ‘armed forces’ in accordance with Section 7896-1a?

(3) A member receives an honorable discharge from the 'armed forces' and immediately re-enlists without returning to teaching service. He subsequently receives a second discharge from the 'armed forces'. Does the 2 year period within which he must return to teaching service begin with the date of the first discharge or with the date of the second discharge? If with the second discharge, must the second period of service also be accorded military service credit?

(4) Under the provisions of Section 7896-1a is it necessary for a member to return to teaching service in Ohio in order to qualify thereunder for military service credit?

(5) If a member of the 'armed forces' is transferred to the reserve armed forces of the United States and does not receive a certificate of honorable discharge, may the Retirement Board grant military service credit under the provisions of Section 7896-1a in the absence of such discharge? If so, what date should be accepted in evaluating such service in lieu of the date of discharge?"

Section 7896-1a of the General Code, being a part of the law relating to your system (Sections 7896-1 - - - 7896-63, General Code), reads as follows:

"Upon presentation of an honorable discharge, and subject to such rules and regulations as may be adopted by the retirement board, any member of the system who was or is *out of active service as a teacher, as defined in this act*, by reason of having become a member of the armed forces of the United States on active duty or service shall be considered as on indefinite leave of absence and shall have such service considered as the equivalent of prior service, provided the member *returns to active service as a teacher* within two years after the effective date of such discharge. The term 'armed forces' of the United States, as used in this section, shall be deemed to include the following: army, navy, marine corps, coast guard, auxiliary corps as established by Congress, army nurse corps, navy nurse corps, red cross nurse serving with the army, navy, or hospital service of the United States, and such other service as may now or hereafter be designated by the Congress of the United States as included therein. Any member of the retirement system or anyone who becomes a new entrant who is assigned or called to take charge of special training for essential national defense work in any of the public schools or universities of the state

shall have the right to make regular contributions to the retirement system even though his salary is paid from federal funds, provided, however that his salary is disbursed by an employer as defined in the retirement act."

Section 7896-1, General Code, is devoted to definitions of terms used in the act. Pertinent to your inquiry, I note the following definitions:

" 'Teacher' shall mean any teacher or other person regularly employed in the public schools of the state of Ohio, who is required by law to have a teachers' certificate; and any teacher in any school or college or other institution wholly controlled and managed, and wholly or partly supported by the state or any subdivision thereof, the board of trustees or other managing body of which shall accept the requirements and obligations of this act. * * *

'Prior-service' shall mean all service as a teacher, as defined by this act, rendered before the first day of September, nineteen hundred and twenty, and all service as an employe of any employer who comes within the provisions of the public employes' retirement system of Ohio or of the school employes' retirement system or any other state retirement system established under the laws of Ohio, for service rendered prior to September first, nineteen hundred and twenty, and similar service in another state credit for which was procured by a member as provided by this act, provided, however, that 'prior-service' shall not be granted to any member for service rendered in Ohio for which credit or benefits have been received in any other state retirement system in Ohio or for credit that was forfeited by withdrawal of contributions unless such forfeited credit shall have been restored under the provisions of the retirement law. If the said teacher served as an employe in any two or all of said capacities, 'prior-service' shall mean the total combined service rendered in said capacities prior to September first, nineteen hundred and twenty."

1. Your first inquiry presents the case of a teacher in the State of Michigan who long prior to his becoming a teacher in Ohio, had had certain military service, after which he had returned to service as a teacher in Michigan. It appears that after becoming a teacher in Ohio, and a member of your System, he purchased credit in accordance with Section 7896-30, General Code, for the four years' service as a teacher in Michigan. The question arises as to his right to claim prior service for army service performed by him while a teacher in the State of Michigan.

Your reference to the purchase of credit for service involves an examination of Section 7896-30, General Code, which reads in part as follows :

“Any member, in addition to service as a teacher as defined in this act, may purchase credit for *similar service* as a teacher in the public day schools, in state universities, state normal schools, and other state or municipal institutions of a character similar to the state or municipally supported schools of Ohio in which membership in the retirement system is allowed, of another state of the United States or of any territory or possession of the United States. Any member may also purchase credit for service rendered subsequent to September first, nineteen hundred and twenty as an employe of an employer who comes within the provision of any other Ohio state retirement system or for *similar service* rendered at any time in another state of the United States or of any territory or possession thereof, provided that credit cannot be purchased for service rendered in Ohio for which credit or benefits have been received in any other state retirement system in Ohio or for credit that was forfeited by withdrawal of contributions. The retirement board shall have final authority to determine and fix the amount of the payment that shall be made for credit for such service. * * *.”

(Emphasis added.)

It will be noted that this section does not purport to give one the right to purchase credit for *military service* rendered while a teacher in another state, but merely to purchase credit for service as a *teacher*. The phraseology, omitting unessential portions, is: “Any member, in addition to service *as a teacher* as defined in this act * * * may also purchase credit * * * for *similar* service rendered at any time in another state * * *.”

It will also be noted that the provision of Section 7896-1a, *supra*, which gives a member of the System the right to prior service, by reason of service in the armed forces, is limited to one “who was or is out of active service as a teacher as defined in this act”. A teacher “as defined in this act”, is limited by the definition which I have already quoted, to one “regularly employed in the public schools of the State of Ohio” or in certain publicly supported institutions in Ohio. It follows that any military service by a teacher who does not come within that definition does not form the basis for any claim for prior service based on service in the armed forces.

It is my opinion, therefore, that the provision of Section 7896-1a relative to the allowance of service in the armed forces of the United States is confined to such service rendered by a teacher employed as such in the public schools of Ohio, and occurring as an interruption of such service, and that no such credit for prior service is either required or permitted to be allowed for military service rendered by a teacher while he was employed in another state.

2. Your second question relates to the right of a teacher member of your system who has been out of active service on account of the war but who was classed as a "conscientious objector", to receive credit for service in the armed forces of the United States and have the same considered as equivalent to prior service. Under the regulations of the selective service system as promulgated by the director of said system pursuant to the federal law, conscientious objectors fall within two classes: (1) Those who object to bearing arms but are willing to render non-combatant service in the army and (2) those who object both to bearing arms and to rendering any such non-combatant service. The former group is classified as 1-A-O and the latter as 4-E. Those in class 1-A-O are regularly inducted into the army and render service on the field and elsewhere but are not compelled to bear arms. Upon completion of their services they are granted a discharge the same as any other member of the military forces.

Those who are classified as 4-E, if found physically fit, are admitted to a civilian camp, where they perform work designated as "work of national importance". Upon the termination of the war they receive a certificate of release, but not a discharge.

It would therefore follow that upon presentation of an honorable discharge by a member of the armed forces, even though a conscientious objector, he is entitled to all the benefits of Section 7896-1a relative to prior service credit on account of military service. The teacher who presents only a release from service in a civilian camp cannot be said to have been in the armed forces and cannot have an honorable discharge and is therefore not entitled to the benefits of that section.

3. Your third question involves the case of a member who has received an honorable discharge from the armed forces and immediately re-enlists and subsequently receives a second discharge. The statute provides that a discharged member of the armed forces shall have his military

service considered as an equivalent of prior service provided he returns to active service as a teacher within two years after the effective date of such discharge. Your question as stated indicates that there was no interval between his first discharge and his reenlistment. His military service was, therefore, for all practical purposes, continuous. The manifest purpose of the law was to confer upon the teacher who has left his work to engage in the military service either voluntarily or otherwise, a special reward for the sacrifice involved by way of making such military service the equivalent of prior service, thereby increasing the pension to which he will be entitled upon retirement. To hold that one who has been honorably discharged and then voluntarily remains in the service by reenlistment for a period that would possibly extend over two years, has thereby cut himself off from the benefits of this provision, would seem to me to be subversive of the manifest spirit and intention of the law. It is my opinion that he would have the right after presentation of his final discharge from the military service to resume his actual work as a teacher within two years thereafter and to claim the benefits of the act as to prior service credit based on the entire period of his military service.

4. Your fourth inquiry is whether under the provisions of Section 7896-1a, supra, the member who has been on a military leave of absence must return to teaching service in Ohio in order to claim the benefit of the prior service provisions for such military service. A careful reading of the first sentence of that section makes it clear, in my opinion, that he must return to teaching service in Ohio in order to claim such benefit. Note that this provision contemplates that he is a member of the system, that he is *in active service as a teacher in Ohio*, that he gives up that work to join the armed forces and that he *returns* to active service as a teacher. The ordinary meaning of the word "return" is that one comes back to that which he has left. It seems to me clear that when he goes out of active service as an Ohio teacher, he must return to the same service which he left.

5. A member of the armed forces who has satisfactorily completed the required period of active service in the army of the United States may be retired from such active service and given what is called a certificate of service. This, for many purposes is equivalent to an honorable discharge. In an opinion by my immediate predecessor, found in 1944 Opinions Attorney General, page 306, the character of this certificate of service

was under consideration, the question being whether it was equivalent to an honorable discharge so as to entitle a soldier having received such certificate, to relief under the soldiers relief statutes. Army regulations were there set out, reading as follows:

“W. D., A. G. O. Form No. 280—Certificate of Service. Form No. 280—‘will be issued to each Reserve Officer and Reserve Nurse; commissioned officer, warrant officer, and enlisted man of the National Guard of the United States; member of the Enlisted Reserve Corps and of the Regular Army Reserve; and trainee inducted under the Selective Training and Service Act of 1940, who satisfactorily completes the required period of active military service in the Army of the United States or who is honorably separated from the military service or honorably relieved from active Federal service prior to the completion of the required period of service, except that in all cases when a W. D., A. G. O. Form No. 55 (Honorable Discharge Certificate) is furnished a W. D., A. G. O. Form No. 280 will not be prepared. * * *”

The then Attorney General held that such certificate of service was equivalent to an honorable discharge, for the purpose of the soldiers relief law.

The regulations somewhat recently released by the head of the selective service of the United States Army also list Form No. 280—Certificate of Service, as one of the forms that may be issued indicating a termination of active service and transfer to the reserves. According to those regulations such certificate is to be equivalent for purposes of rehabilitation, to an honorable discharge. There is no doubt that it does indicate the completion of military service and of honorable discharge therefrom, subject only to the possibility of a recall to active service. Accordingly, there would be no reason why a teacher having received such certificate of service might not return to active duties as a teacher and if he does so within the time prescribed, he is certainly entitled to the rights accorded him by Section 7896-1a, *supra*.

Respectfully,

HUGH S. JENKINS

Attorney General