

OPINION NO. 86-095**Syllabus:**

R.C. 3307.512 entitles a current member of the State Teachers Retirement System, who was prevented from making contributions under R.C. 3307.51 because of an absence due to his own illness or injury or who was granted a leave for one of those purposes specified in R.C. 3307.512, to purchase up to two years of service credit for the period of such absence or leave, even where the absence or leave occurred prior to April 4, 1985, the effective date of R.C. 3307.512.

To: John E. Meyers, Sandusky County Prosecuting Attorney, Fremont, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 10, 1986

I have before me your opinion request concerning the purchase of service credit in the State Teachers Retirement System under R.C. 3307.512. Specifically, you ask whether R.C. 3307.512 entitles a member of the State Teachers Retirement System to purchase service credit for time spent on an approved leave of absence which occurred during the 1983-84 school year, prior to the effective date of R.C. 3307.512.

December 1986

R.C. 3307.512 was enacted in 1983-1984 Ohio Laws, Part I, 1296 (Am. Sub. S.B. 378, eff. April 4, 1985) and states in pertinent part:

(B) Any member of the state teachers retirement system who is, or has been, prevented from making contributions under [R.C. 3307.51] because of an absence due to his own illness or injury, or who is, or has been, granted a leave for educational, professional, or other purposes pursuant to [R.C. 3319.13, 3319.131, or 3345.28] or for any other reason approved by the state teachers retirement board, may purchase service credit, not to exceed two years for each such period of absence or leave, either by having deductions made in accordance with division (C) of this section or by making the payment required by division (D) or (E) of this section. (Emphasis added.)

The plain language of R.C. 3307.512(B) entitles any member of the State Teachers Retirement System (hereinafter STRS), who has been prevented from making contributions under R.C. 3307.51¹ because of an absence due to illness or injury or who has been granted a leave for any of the purposes specified in R.C. 3307.512(B), to purchase up to two years of service credit for the period of absence or leave, regardless of when such absence or leave occurred. The mention in R.C. 3307.512(B) of any member who is or "has been" prevented from making contributions during specified absences or who is or "has been" granted specified leaves makes it clear that the legislature intended the statute to apply to absences or leaves which had occurred prior to the effective date of the statute. Thus, in the situation you present, although the STRS member took a leave of absence during the 1983-84 school year, prior to the effective date of R.C. 3307.512, that section entitles the member to purchase service credit for the period of such leave, assuming the leave was granted for one of those purposes specified in R.C. 3307.512. See Morton v. State Teachers Retirement Board, 70 Ohio App. 2d 114, 434 N.E.2d 1101 (Franklin County 1980) (finding that the right to purchase service credit under R.C. 3307.32 is governed by the version of the statute in effect at the time application for the purchase is made).

The conclusion that the General Assembly intended R.C. 3307.512 to encompass leaves of absence occurring prior to the effective date of that section is supported by an examination of R.C. 3307.513, which also was enacted in Am. Sub. S.B. 378. R.C. 3307.513, as enacted in Am. Sub. S.B. 378, stated in part:

For one year after the effective date of this section, the following members of the state teachers retirement system may purchase service credit, not to exceed two years, for periods during which they did

¹ R.C. 3307.51 provides that each teacher who is a member of STRS must contribute to STRS eight percent of his earned compensation, or a higher rate of such compensation, but not greater than ten percent, as fixed by the State Teachers Retirement Board. R.C. 3307.51 also provides that such contribution shall be deducted by the employer on each payroll in an amount equal to the applicable percentage of the teacher's paid compensation for the payroll period or other approved period.

not make contributions pursuant to section 3307.51² of the Revised Code as follows:

(A) A member who was granted a leave of absence prior to July 1, 1982, for personal illness or injury, or for educational, professional, or other purposes under section 3319.13 or 3319.131 of the Revised Code or any other reason approved by the state teachers retirement board may purchase service credit for the leave;

....
For each year of service credit purchased under this section, the member shall pay to the system for credit to his accumulated account an amount determined by multiplying the employee rate of contribution in effect at the time the leave or absence commenced by his annual compensation for full-time employment during the first year of service in Ohio following termination of the absence or leave and adding to that amount interest compounded annually, at a rate established by the board, from the date the absence or leave terminated to the date of payment.

A member may purchase all or part of the credit for which he is eligible in one or more payments. A member who purchases service credit for an absence or leave under this section may not purchase credit for that absence or leave under section 3307.512 of the Revised Code.³ (Emphasis and footnote added.)

Thus, for a period of one year following the effective date of Am. Sub. S.B. 378, R.C. 3307.513 entitled a member of STRS to purchase service credit in the manner set forth in that section for an approved leave of absence granted prior to July 1,

² In 1983-1984 Ohio Laws, Part I, 1296 (Am. Sub. S.B. 378, eff. April 4, 1985), the General Assembly, in addition to enacting R.C. 3307.512 and R.C. 3307.513, amended R.C. 3307.51, governing member contributions to STRS, deleting the following language:

Any teacher under contract, who, because of his own illness, injury, leave granted pursuant to section 3319.13 or 3319.131 of the Revised Code, or other reason approved by the board, is prevented from making his contribution to the system for any payroll period may have such deductions made from other payrolls during the year, or may pay such amount to the employer and the employer shall transmit such amount to the system.

Thus, prior to the enactment of Am. Sub. S.B. 378, member contributions to STRS for approved leaves or absences were made in accordance with R.C. 3307.51. The General Assembly again amended R.C. 3307.51 in Am. H.B. 502, 116th Gen. A. (1986) (eff. April 24, 1986); such amendment is not, however, relevant to the discussion of your question.

³ R.C. 3307.513 was amended in Am. H.B. 676, 116th Gen. A. (1986) (eff. April 15, 1986). The provisions of Am. H.B. 676 are not, however, relevant to a discussion of your question.

1982. R.C. 3307.513 also stated, however, that should a member elect to purchase credit under R.C. 3307.513 for such leave or absence, he was not entitled to purchase credit for that period under R.C. 3307.512, thus giving a member the option for one year of purchasing credit for a leave granted prior to July 1, 1982 under either R.C. 3307.513 or R.C. 3307.512. It is apparent, therefore, that the General Assembly intended to permit members of STRS to purchase service credit under R.C. 3307.512 for leaves or absences granted prior to April 4, 1985, the effective date of that section.

Your concern appears to be, however, that if R.C. 3307.512 is read as authorizing the purchase of service credit for an absence or leave which was taken during the 1983-84 school year, prior to the effective date of the statute, such a reading gives the statute retroactive effect in violation of Ohio Const. art. II, §28, which states in part: "The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts...."

As my predecessor stated in 1981 Op. Att'y Gen. No. 81-100 at 2-377:

It is not a function of this office, which is part of the executive branch of government, to opine on the constitutionality of state statutes. Rather, that is the function of the judiciary. See 1980 Op. Att'y Gen. No. 80-002. If a statute is ambiguous, this office will choose a constitutional interpretation over one which appears to be unconstitutional. See R.C. 1.47(A). See also Brotherhoods v. P.U.C., 177 Ohio St. 101, 202 N.E.2d 699 (1964). However, where a statute is clear,...this office can only advise you to act in accordance with the plain language of the statute, on the assumption that the statute is constitutional.

I note, however, that there is authority for the proposition that Ohio Const. art. II, §28 does not bar the imposition of new obligations on the State or its political subdivisions.⁴ See Kumler v. Silsbee, 38 Ohio St. 445 (1882); State ex rel. Department of Mental Hygiene & Correction v. Eichenberg, 2 Ohio App. 2d 274, 207 N.E.2d 790 (Medina County 1965); 1974 Op. Att'y Gen. No. 74-005; 1972 Op. Att'y Gen. No. 72-009. But see State ex rel. Crotty v. Zangerle, 133 Ohio St. 532, 14 N.E.2d 932 (1938); Commissioners v. Rosche Bros., 50 Ohio St. 103, 33 N.E. 408 (1893).

It is, therefore, my opinion, and you are advised, that R.C. 3307.512 entitles a current member of the State Teachers Retirement System, who was prevented from making contributions under R.C. 3307.51 because of an absence due to his own illness or injury or who was granted a leave for one of those purposes specified in R.C. 3307.512, to purchase up to two years of service credit for the period of such absence or leave, even where the absence or leave occurred prior to April 4, 1985, the effective date of R.C. 3307.512.

⁴ The employers of members of STRS are public entities. See R.C. 3307.01(A) and (B).