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RETIREMENT SYSTEM, PUBLIC EMPLOYEE—PRESENT MEMBER NOT ENTITLED TO RECEIVE PRIOR SERVICE CREDIT FOR PERIOD OF TIME HE WAS A MEMBER AND CONTRIBUTED TO CINCINNATI RETIREMENT SYSTEM.

SYLLABUS:

A present member of the public employes retirement system is not entitled to receive prior service credit for that period of time in which he was a member and contributed to the Cincinnati Retirement System.

Columbus, Ohio, December 30, 1949

Mr. Fred J. Morr, Chairman, The Public Employes Retirement System Board, Columbus, Ohio

Dear Sir:

Your communication requesting my opinion reads as follows:

“Certain restrictions have been placed against the allowance of prior service credit by Section 486-32, paragraph 8, of the General Code. Currently the Board has for consideration a claim for prior service credit by a county employe who became a member of this System on July 1, 1938, at which time membership originally was extended to county employes. The date of first service as a county employe by this member was May 18, 1934, and for several years (approximately 18) prior to that time he had been employed by the City of Cincinnati.

“While employed by the City of Cincinnati, that city established its own retirement system, to which the member made the regular contributions from the time the local system was established until he left the employ of the city on May 17, 1934 (immediately following which he entered the employ of the county).

“The Public Employes Retirement System Board has reviewed the case and has instructed me to secure an opinion from you whether under those circumstances prior service credit as an employe of the City of Cincinnati can be granted by this Board.”

In an opinion rendered by me, Opinion No. 2423, found in Opinions of Attorney General for 1938, at page 986, I held in the third branch of the syllabus that:

“A present employe of Hamilton County, who is a member of the Public Employes Retirement System is entitled to prior

service credit for services rendered as a municipal employe of the City of Cincinnati prior to January 1, 1935, regardless of whether or not the position in which such service was rendered for the City of Cincinnati comes within the provisions of the Retirement System of the City of Cincinnati."

At the time the above opinion was rendered, paragraph 8 of Section 486-32, General Code, read as follows:

" 'Prior service' shall mean all service as a state employe, county employe, municipal employe, park district employe, conservancy employe, health employe or public library employe rendered before January 1, 1935, provided that if the employe 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 January 1, 1935."

Since that time Section 486-32, supra, has been amended and it now provides that:

" 'Prior service' shall mean all service as a public employe rendered before January 1, 1935, and all service as an employe of any employer who comes within the provisions of the state teachers retirement system or of the state public school employes retirement system or of any other retirement system established under the laws of Ohio rendered prior to January 1, 1935, if the employe claiming such service did not contribute to or receive benefits from any retirement system for such service, provided that if the employe 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 January 1, 1935. In addition thereto, 'prior service' shall mean all service credited for active duty with the armed forces of the United States as provided in section 486-47, General Code."

The retirement system of the City of Cincinnati was established August 1, 1931, and from the facts submitted it appears that said subject was a member of the Cincinnati retirement system and contributed to such system for the period between 1931 and 1934; subsequent to that time he became a county employe amenable to the laws governing the Public Employes Retirement System. The law is clear when it states "if the employe claiming such service did not contribute to or receive benefits from any retirement system for such service." It necessarily follows, therefore, that an employe who was a member of the Cincinnati retirement system and contributed thereto is not entitled to prior service credit for that time covered in said system.

In the case of State ex rel. West v. Waidner et al., Retirement Board of Public Employes Retirement System, 152 O. S. 109, at page 111, the court said :

“The relator contends that the history and wording of these statutes disclose no intention on the part of the General Assembly to deny him credit for his prior service. There seems to be no basis for this contention. It is true, as suggested, that there has been a disposition on the part of the state to become more generous in the payment of pensions to its former employees, but this is not inconsistent with an occasional modification of the conditions considered necessary to safeguard the pension system as its burden increases.”

In view of the foregoing, and based on the facts presented, you are advised that the present member of the public employes retirement system is not entitled to receive prior service credit for that period of time in which he was a member and contributed to the Cincinnati Retirement System.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.