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PUBLIC EMPLOYES, RETIREMENT SYSTEM—STATE HIGHWAY PATROL PENSION SYSTEM—REFUND, FUNDS IN PUBLIC EMPLOYES RETIREMENT SYSTEM — TO MEMBERS TRANSFERRED TO HIGHWAY PATROL PENSION SYSTEM—REQUIREMENT, NOT ONLY AMOUNTS CREDITED JANUARY 1, 1941, BUT ALSO INTEREST FROM SAID DATE TO DATE OF REFUND AT “REGULAR INTEREST” RATE—SECTIONS 486-32, 1181-32, GENERAL CODE.

SYLLABUS:

The refund required by Section 1181-32, General Code, of funds in the public employes retirement system, carried with it not only the amounts credited on January 1, 1941, to the members transferred to the state highway patrol pension system but also interest on such amounts from January 1, 1941, to the date of the refund, at the “regular interest” rate fixed by the retirement board, pursuant to Section 486-32, General Code.

Columbus, Ohio, March 26, 1943.

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

Gentlemen :

I have your communication requesting my opinion, reading as follows :

“We are enclosing herewith a letter from our state examiner of the retirement systems, in which it is shown that the state high-

way patrol pension fund was transferred from the public employes retirement fund as of September 6, 1941, and in this connection he submits the following question:

'When funds are transferred from one department to another—the said funds having been invested in interest bearing securities in accordance with the statutes requiring such funds to be so invested—does the interest earned thereon follow the principal which has been transferred?'

Will you kindly examine the inclosure and advise with your opinion in answer to the said question?"

The letter of your state examiner attached to your communication shows that on November 5, 1941, the public employes retirement system issued a check to the state highway patrol pension board in the amount of \$63,500.43, and on December 15, 1941, another refund check in the amount of \$798.04. It is further stated that the amount of such refunds did not include any interest for the year 1941, which the said funds may have earned.

The state highway patrol retirement system, together with the pension fund, was established by an act passed by the 94th General Assembly, found in 119 O. L. p. 752, et seq. This act became effective September 5, 1941, and is codified as Sections 1181-13 to 1181-37, inclusive, of the General Code.

By the provisions of Section 1181-14, membership in the pension fund is to include any member of the state highway patrol who is a qualified employe in either the uniform division or the radio division, and also the superintendent and assistant superintendent of the state highway patrol.

Under the provisions of Section 1181-35, each member is required to contribute to the pension fund 4 per cent of his salary and the state of Ohio is required to pay into the pension fund an equal amount for each contributor.

Section 1181-32 reads as follows:

"Immediately upon taking effect of this act and the appointment of the pension board, they shall make application to the public employes retirement system for the *refunding of any money or moneys together with accrued interest previously paid by any member or members into said public employes retirement system*, and the public employes retirement board is hereby authorized and directed to *pay* the state highway patrol pension board *any*

funds in their custody belonging to any member eligible to the state highway patrol pension fund paid by said member into said public employes retirement system. The moneys so refunded shall be credited to the individual accounts of each member for the state highway patrol pension fund and said members are relieved from further payments into public employes retirement system." (Emphasis mine.)

This is the only section of the act which seems to throw light on the question submitted. It will be noted that the first sentence makes reference to "accrued interest" and uses these words in such a way as to give a possible impression that they refer to accrued interest paid by a member or members into the public employes retirement funds. This construction, of course, could have no basis for the reason that the members of the public employes retirement system are not under any circumstances required to pay interest. Plainly, what the Legislature intended to say was that the pension board should make application for the refund of any moneys previously paid into the public employes retirement system, together with any accrued interest thereon, to which such contributing employes might have been entitled upon the taking effect of the highway patrol retirement system. This construction is harmonious with the second mandate contained in this section, to-wit, that the public employes retirement board is authorized and directed to pay to the state highway patrol pension board "any funds in their custody belonging to any member eligible to the state highway patrol pension fund paid by said member into said public employes retirement system." Note that what the public employes retirement board is required to pay is specifically "*any funds in their custody belonging to any member.*"

Plainly, the intent of the Legislature in the enactment of this section was simply to transfer to the custody of the newly created pension system the share which each person had in the public employes retirement system at the time when by the operation of the new law he was transferred to the new system. Therefore, it becomes necessary to examine the provisions of law relative to the public employes retirement system in order to determine precisely what share each person so transferred had in the funds of that system when the new act became effective and he was automatically transferred. The organization and operation of the public employes retirement system are provided by Sections 486-32 to 486-75, inclusive, of the General Code.

Section 486-51 provides for the creation of the following funds: (a) the employes' savings fund, (b) the employer's accumulation fund, (c) the annuity and pension reserve fund, (d) the income fund and (e) the expense fund.

The employees' savings fund is the "fund in which shall be accumulated contributions from the compensation of contributors for the purchase of annuities." This, therefore, is the fund into which a portion of the salary of each member is required to be paid, the same being deducted from his salary and paid directly to the retirement system.

Section 486-41 provides for the investment by the retirement board of all the funds in its hands in certain securities and for the payment of all income derived from such investments into what is called the "income fund." Section 486-51 contains a provision requiring the retirement board annually to allow "regular interest" for the preceding year to each of the funds above mentioned and further provides that "the amount so allowed shall be due and payable to said funds and shall be annually credited thereto by the retirement board and paid from the income fund."

Section 486-32 contains a definition of the words "regular interest" and proceeds then to show how each contributing member's share of his regular interest is added to his accumulated contributions. Paragraphs 12 and 13 of that section read as follows:

"12. 'Regular interest' shall mean interest at such rate or rates for the respective funds as the retirement board may from time to time determine, which rate or rates shall never be more than four per centum per annum, compounded annually; provided, however, that upon retirement the annuity granted any member shall have a reserve equal to the total of such employe's regular contributions with interest at the rate of four per centum per annum, compounded annually. Provided further, however, that in the purchase of additional annuity, as provided in section 486-51, paragraph (c), of the General Code, interest shall be computed and credited to reserves therefor at such rate as the retirement board shall fix as regular interest thereon. *Interest on contributions from members within any one calendar year shall begin on the first day of the calendar year next following and shall be computed at the end of each calendar year, except in the case of an employe who retires before the end of the year.*

13. 'Accumulated contributions' shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the employes' savings fund *together with regular interest thereon.*" (Emphasis mine.)

This is the section which determines just what is the share of the funds in the custody of the public employes retirement system "belonging to any member" within the meaning of Section 1181-32, General Code. This "accumulated contribution" which is credited to him individually each year is money of his own which he has contributed, plus the earnings there-

on computed at the "regular interest rate fixed by the retirement board." It will be noted that interest on contributions from the members in any one calendar year *shall begin* on the *first day* of the *calendar year next following*. I take this to mean that the retirement board is not required to compute and credit to the contributor interest on the current monthly installments deducted from his salary, the reason for this doubtless being the extreme difficulty and complication resulting from the necessity of computing interest on these small monthly deductions for irregular portions of the current year. The employe is, however, entitled to have interest on the aggregate of his contributions computed at the "regular interest" rate and beginning with the first day of the calendar year next following their payment.

It will be noted in this same provision that this interest shall be computed "at the end of each calendar year," except in the case of an employe who retires before the end of the year. We are of course not here dealing with the case of employes who "retire" in the regular manner contemplated by the law. Under the provision above quoted, a special allowance by way of interest rate is allowed upon retirement.

What the employe has earned by way of interest accumulation on his contribution is clearly to be computed at the end of the year on his credit balance as it stood on the first day of such year. But the fact that the board is not required to *compute* it until the end of the calendar year does not affect his ownership of the interest which has in fact accrued in the meantime. It goes to help make up the "accumulated contribution" referred to in paragraph 13 of Section 486-32, which I have hereinabove quoted. Furthermore, the fact that the board might not fix the rate of "regular interest" until the end of the year would not prevent it from paying that interest when the rate has been determined.

We have here a case where a group of employes who have a financial interest in a fund in the hands of one public board have been, by action of the Legislature, lifted bodily out of that system and placed in another, and the Legislature has in effect declared that the custody of the fund which they have contributed, together with that which it has earned, shall be at the same time taken out of the hands of the original board and placed in a new custody.

It is my opinion, therefore, that the public employes retirement board should pay over to the state highway patrol pension fund the interest on the total amount that was in their custody on January 1, 1941, belonging to the members of the public employes retirement system who were transferred to the highway patrol pension system, such interest to be calcu-

lated from the 1st day of January, 1941, to the time of payment, at the regular interest rate fixed by the public employes retirement board for the year 1941.

Respectfully,

THOMAS J. HERBERT,
Attorney General.