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SCHOOL EMPLOYES RETIREMENT SYSTEM—CONTRIBUTING MEMBER, ALSO CONTRIBUTING MEMBER OF ANY OTHER RETIREMENT SYSTEM ESTABLISHED UNDER OHIO LAWS—TO DETERMINE FINAL AVERAGE SALARY, COMPENSATION EARNED AS MEMBER OF SCHOOL EMPLOYES RETIREMENT SYSTEM IS TO BE CONSIDERED—SECTION 7896-64 G. C.

SYLLABUS:

In determining the final average salary under Section 7896-64, General Code, of an employe who is a contributing member of the school employes retirement system, and who is also a contributing member of any other retirement system established under the laws of the state, only his compensation earned as a member of the school employes retirement system is to be considered.

Columbus, Ohio, May 25, 1946

Mr. Thomas G. O'Keefe, Executive Secretary School Employes Retirement System of Ohio
Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"In determining the final average salary of an employe, who is a contributing member of the School Employes Retirement System and the Public Employes Retirement System, can the combined total annual earnings be considered?

We wish to call to your attention that the Legislature passed S. B. 54, effective June 30, 1939, which defined 'prior service' as follows:

'Prior service' shall mean all service as an employe, as defined by this act, 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 State Teachers' Retirement System, or any other State retirement system established under the laws of Ohio, for service rendered before the first day of September, nineteen hundred and thirty-seven, by a member 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 or new entrant for service rendered in Ohio for which credit for benefits have

been received in any other state retirement systems in Ohio or for credit that was forfeited by withdrawal of contributions. If said 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 September first, nineteen hundred thirty-seven.

You will note that the last sentence of this definition states that 'prior service' shall mean the total combined service rendered in said capacities prior to September 1, 1937. Therefore, are we to assume that in determining the 'final average salary' as defined in Section 7896-64 that we must also consider the combined earnings of the employe in all public service provided the final average salary does not exceed \$2000.00 for the ten year period or fraction thereof immediately preceding his date of retirement? It should also be called to your attention that Section 7896-64, under the definition of 'employe,' permits a member of the School Employes Retirement System to also contribute to another state retirement system provided the combined salaries do not exceed \$3000.00 a year.

We have a case before the Retirement Board in which a member of the Retirement System is contributing both to the Public Employes and the School Employes Retirement Systems. If we consider only the salary he earned as a school employe during the last ten years, it will mean an appreciable reduction in his retirement allowance because his final average salary would be reduced. Prior to the amendment in the definition of the final average salary, we used the salary he earned as a public employe beginning September 1, 1927, and ending August 31, 1937. Without the consideration of the salary earned as a public employe, the granting of prior service credit for other public service would have been meaningless.

Whether this interpretation of the definition of the 'final average salary' carries through to the new definition is a question upon which we would like to have your opinion as soon as convenient."

Your quotation of the definition "prior service" as applying to your system, is from Section 7896-64, General Code. This has undergone no change since its enactment in 1939. It is to be noted that there is included all service prior to the first day of September, 1937, whether rendered as an employe who is within your system or as an employe who comes within the purview of the public employes retirement system or of the state teachers retirement system, or any other state retirement system established under the laws of Ohio. This has the effect of building

up the possible years of prior service upon which a pension will be based. This entire prior service pension has to be paid out of the funds of your system.

When a member of your system retires, he is entitled under the provisions of Section 7896-100 General Code, to (a) an annuity based on his accumulative contributions; (b) a pension of an equivalent amount; and (c) "an additional pension, if such employe is a present employe equal to 2% of his final average salary multiplied by the number of years of service certified in his prior service certificate."

It is important, therefore, to consider what is meant by "final average salary." That phrase is defined in Section 7896-64, General Code, as follows:

"'Final average salary' shall mean the average annual compensation, not exceeding two thousand dollars, *of a member* during the ten years or fractions thereof, immediately preceding his date of retirement, * * *"

Note that the average annual compensation that is to be the basis of this determination is the salary "of a member." We again turn to another paragraph of the same section for the definition of "member." It is defined as follows:

"'Member' shall mean any person included in the membership of the retirement system as provided in this act."

It appears very clear that the word "member" is used here as it is used in almost every section of the act relating to the system, to mean a member of the public school employees retirement system and nothing else. It, therefore, seems to follow irresistibly that in determining the final average salary for the purpose of computing a prior service pension, nothing else could be considered except the salary earned by a member of your system serving an employer who comes within the scope of your system. It would be doing gross violence to the language above quoted defining "final average salary" to extend it to other employments of a public character which might fall within the scope of some other retirement system. This conclusion is particularly clear from the very fact that in the very same section in which "final average salary" is defined, we find also "prior service" defined as quoted in your letter. In the definition

of "prior service," the General Assembly saw fit specifically to include service falling within any of the other retirement systems established under the laws of the state whereas in the definition of "final average salary" it saw fit to omit any such inclusion.

Aside from the obvious meaning of the language used, it may be pointed out that if the definition of "final average salary" should be held to include salaries earned by one of your members as a member of one or more other retirement systems, there would result a substantial increase in the burden which your system must bear in paying this prior service pension. You, in turn, would be obliged to throw this extra burden upon the employers who come within the scope of your system. You do, of course, have the benefit of that portion of Section 486-64 which you have quoted to the effect that "prior service shall not be granted to any member or new entrant for service rendered in Ohio for which credit or benefits have been received in any other state retirement systems in Ohio or for credit that was forfeited by withdrawal of contributions."

Specifically answering your question, it is my opinion that in determining the final average salary under Section 7896-64, General Code, of an employe who is a contributing member of the school employes retirement system, and who is also a contributing member of any other retirement system established under the laws of the state, only his compensation earned as a member of the school employes retirement system is to be considered.

Respectfully,

HUGH S. JENKINS
Attorney General