

3816

TEACHERS RETIREMENT SYSTEM — BOARD:

DUTY OF BOARD TO RETURN OR TENDER RETURN, ACCUMULATED CONTRIBUTIONS TO ALL TEACHERS WHO HAVE CEASED ACTIVE SERVICE FOR TEN YEAR PERIOD — AFTER TENDER, ACCUMULATED CONTRIBUTIONS, INTEREST WILL CEASE — H.B. 268, 94 G.A., SECTIONS 7896-25, 7896-40 G.C.

SYLLABUS:

1. *Prior to the effective date of Section 7896-25, General Code, as amended in House Bill No. 268, of the 94th General Assembly, the Teachers Retirement Board may not require teachers to accept the return of their accumulated contributions in the Teachers Retirement System at the expiration of ten years after they have ceased active service as teachers, under the terms of Section 7896-40, General Code.*

2. *After the effective date of Section 7896-25, General Code, as amended in House Bill No. 268, of the 94th General Assembly, it will be the duty of the Teachers Retirement Board under the terms of Section 7896-40, General Code, to return or tender the return of the accumulated contributions in the Teachers Retirement System of all teachers who have ceased active service for a period of ten years and who have not previously demanded such return.*

3. *After the expiration of the period of ten years from the last service as a teacher of a contributor in the Teachers Retirement System, and upon the tender of the return to him of his accumulated contributions in said system by the Teachers Retirement Board, the accumulation of further interest on said accumulated contributions will cease.*

Columbus, Ohio, May 27, 1941.

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

Dear Sir:

I am in receipt of your inquiry concerning the powers and duties of the Ohio State Teachers Retirement Board with respect to the accumulated contributions of members of the Teachers Retirement System, after those members cease to be in active service. Specifically, the question, substantially as you state it, is whether or not the Retirement Board may require contributors in the Retirement System who have ceased to be teachers for any cause other than death or retirement, to accept the return of their accumulated contributions in the system upon or after the expiration of ten years from the time they cease to be teachers, or must the board hold those funds until they are voluntarily withdrawn by the contributor or his designated beneficiary or legal representative in the event of his death.

The Ohio State Teachers Retirement System was established by Act of the General Assembly of Ohio, in 1919 (108 O. L., Pt. 1, p. 195). The said Act was codified as Sections 7896-1 to 7896-63, inclusive, of the General Code of Ohio. As stated in the Act, the Retirement System was "established for the teachers of the public schools of the State of Ohio, which shall include the several funds created and placed under the

management of a 'Retirement Board' for the payment of retirement allowances and other benefits under the provisions of this Act" (Section 7896-2, General Code).

By the terms of Section 7896-3, General Code, the general administration and management of the Teachers Retirement System is vested in the State Teachers Retirement Board with power to make all necessary rules and regulations not inconsistent with the terms of the Act to carry into effect its provisions.

Provision was made in the Act for regular deductions from the compensation of all teachers who by the terms of the Act became members in the system, and for the transmission of the proceeds of these deductions to the Retirement Board to be credited by it to a fund within the system designated, "The Teachers' Savings Fund." The term "contributor" as used throughout the Act, is defined therein as, "any person who has an account in the Teachers' Savings Fund." By the terms of Section 7896-19, General Code, as enacted in the said Act, the Retirement Board was directed to provide for the maintenance of an individual account with each member, showing the amount of such member's contributions and the interest accumulations thereon. It was provided that the term "accumulated contributions," as used in the Act, "shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the Teachers' Savings Fund, together with regular interest thereon." "Regular interest" was defined as "interest at four per cent per annum compounded annually."

In Section 7896-40, General Code, provision was made for the return of the accumulated contributions of contributors who did not or could not qualify for retirement allowances in the form of annuities and pensions as provided for in the Act. This section has not been amended since the original enactment in 1919. It then read, and now reads as follows:

"A contributor who ceases to be a teacher for any cause other than death or retirement, upon demand, within ten years after such cessation of service, shall be paid the accumulated contributions standing to the credit of his individual account in the teachers' savings fund. Ten years after such cessation of service, if no previous demand has been made, any accumulated contributions of a contributor shall be returned to him or to his legal representatives. If the contributor or his legal represen-

tatives cannot then be found, his accumulated contributions shall be forfeited to the retirement system and credited to the guarantee fund.”

The above statute is not ambiguous. In accord with its plain terms a contributor in the Teachers Retirement System who ceases to be a teacher for any cause other than death or retirement may demand the return of his accumulated contributions at any time and it thereupon becomes the duty of the Retirement Board to comply with the demand. It is equally clear under the terms of the statute standing alone, that if the contributor does not demand the return of his accumulated contributions, it becomes the duty of the Retirement Board after ten years from the cessation of service of the contributor to return them to the contributor or at least tender their return to the contributor or his legal representatives and it follows, in my opinion, that the interests of proper financing in accord with the trust reposed in the Retirement Board, requires such a construction of the terms of the statute for the benefit of the funds composing the Retirement System on behalf of its membership that upon the tender of the return of a contributor's accumulated contributions under the circumstances mentioned accrual of further interest upon such accumulations thereupon ceases.

I gather from your communication that the practice has been not to return the accumulated contributions of contributors until a demand would be made therefor, and unless a demand would be made the funds would be held, and regular interest be permitted to accumulate thereon until such time as a demand were made for their return. This apparently has been done out of an abundance of caution, with the thought of a possible conflict in terms between Section 7896-40, General Code, and Sections 7896-25 and 7896-32, General Code.

The last two numbered sections when originally enacted in 1919, (108 O. L. Pt. 1, pp. 202-203) read as follows:

“Section 7896-25. The membership of any person in the retirement system shall cease if he withdraw his accumulated deductions or if he retire on a pension as provided in this act, or if he die, or if, in any four-year period after he last became a member, he shall render less than two years of service as a teacher.”

“Section 7896-32. When a present-teacher ceases to be a

member his prior-service certificate shall be void and not renewable.”

In 1925, before the expiration of ten years from the cessation of active service of any teacher who was a contributor in the Retirement System could have come about, both Sections 7896-25 and 7896-32, General Code, were amended (111 O.L., 38, 39). As so amended, there was added to the then existent Section 7896-25, General Code, the following clause:

“Unless the retirement board in accordance with its rules and regulations shall grant a longer period of absence from active service as a teacher without the loss of his status as a member.”

Section 7896-32, General Code, was then amended in line with the change made in Section 7896-25, General Code, at that time by adding thereto a proviso permitting the Retirement Board under some circumstances to restore teachers who had lost their membership and credit for prior service to the full status of membership with the limitation however, that the right to such restoration extended only to those teachers who had not withdrawn their accumulated contributions. This limitation was not expressly contained in Section 7896-25, General Code, as amended in 1925. Said Section 7896-32, General Code, which has since remained as it was amended in 1925, was made to read as follows:

“When a present-teacher ceases to be a member his prior-service certificate shall be void and not renewable: provided a teacher as defined in this act who failed to establish membership with the status of present-teacher as defined in this act, or a teacher who has been out of active service two years or more subsequent to September 1, 1920, and who has not withdrawn his accumulated contributions may by establishing membership and by being in active service in the public schools of Ohio thereafter for a period of not less than one school year be granted the status of present-teacher by the retirement board.”

Not until 1930 at least, would any occasion have arisen for the return of a contributor's accumulated contributions by the Retirement Board in accordance with the provisions of Section 7896-40, General Code, and then probably there were very few such occasions for some few years thereafter. It apparently was soon felt that some provision should be made for the reinstatement of teachers who had withdrawn their accumulated contributions, and in 1933, Section 7896-25, General

Code, was again amended (115 O. L., 402), by the addition thereto of the following clause:

“But the Retirement Board may reinstate a teacher who has withdrawn his accumulated contributions if he repay to the Retirement Board the amount he has withdrawn and interest at the rate of four percent from the date of withdrawal to the date of reinstatement on or before June 30, 1934.”

The statute was again amended in 1935 (116 O.L., 49). In its amendment the date of repayment by the member was made to read January 30, 1936 instead of January 30, 1934, and there was added the following provision:

“Provided no teacher may be reinstated who has withdrawn his money subsequent to the passage of this Act.”

In the state of the law as it existed prior to 1933, the Retirement Board was empowered to grant leave of absence from active service to members without loss of status, but if they should withdraw their accumulated contributions instances might occur where the leave of absence that might be granted without loss of status would conflict with the provision that withdrawal of accumulated contributions caused the teacher to lose his membership without any means being provided for him to overcome the situation. The same situation existed after the amendment of Section 7896-25, in 1935, provided the member should withdraw his contributions subsequent to the amendment of the statute and it apparently was felt by the Retirement Board that the return of the contributions to the members by the board was equivalent to a withdrawal of the money. In other words, that the term “withdrawal,” as used in the statute, was not limited to the voluntary act of the teacher in withdrawing his money but included as well the return of the contributions by the board under the provisions of Section 7896-40, General Code. To make the situation more complicated, Section 7896-25, General Code, was again amended in 1939 (118 O. L., 554), whereby indefinite leaves of absence for teachers without loss of status as members of the Retirement System were provided for, providing they had not withdrawn their accumulated contributions, and no provision was then made whereby a teacher who had withdrawn his accumulated contributions could be protected or protect himself by the repayment of the contributions which had been withdrawn. Said Section 7896-25, General Code, as amended in 1939 read as follows:

“The membership of any person in the retirement system shall cease if he withdraws his accumulated deductions or if he retire on a pension as provided in this act, or if he die, or if in any four-year period after he last became a member, he shall render less than two years of service as a teacher, unless the retirement board in accordance with its rules and regulations shall grant a longer period or indefinite leave of absence from active service as a teacher without the loss of his status as a member.

An indefinite leave of absence may be granted under the following conditions:

Any member who withdraws from teaching service but who, before the expiration of his membership, becomes a member of the school employes' retirement system or the public employes' retirement system of Ohio or any other state retirement system established under the laws of Ohio, and who does not withdraw his accumulated contributions in this system, shall be considered as on indefinite leave of absence, so long as he retains such membership, until such time as he elects to retire or is forced to retire under the retirement provisions of the retirement act under which he is an active member at the time of retirement. A member on such leave of absence shall retain all rights and privileges of membership in the retirement system.”

In the last analysis, the question here involved is one of statutory construction the cardinal rule for the determination of which is the intent of the Legislature wherein the law was enacted. In the determination of that intent it is necessary to take into consideration the various factors and circumstances that manifest the intent. Not only is the precise verbiage of a statute to be considered as though it stood alone but that verbiage must be applied in the light of the language used in other statutes relating to the same subject which are said to be in *pari materia*, as well as the end to be attained by the enactment of the statute. An act of the Legislature should be construed from its four corners as though it constituted one harmonious whole and each individual statute included in the Act should be looked upon as harmonizing with others in the same Act, for such must necessarily have been the intent that prompted its enactment. To say otherwise, would be unjustified in the light of experience and would amount to the ascription of an unwholesome purpose to the lawmaking body.

The law relating to the Teachers Retirement System having been enacted originally in a single Act of the Legislature, and with one apparent purpose as expressed in its title and in Section 7896-3, General

Code, must be regarded as a system or scheme of legislation and its several parts construed together and harmonized as constituting a single expression of legislative intent and as being the expression of a settled policy, and amendments made to any of the particular statutes making up the system of legislation are to be taken as intended to fit into the existing system theretofore established and are to be carried into effect conformably to it and made to harmonize with the general tenor and purpose of the system, unless a different intent is manifest by the language used, which is not the case in any of the amendments referred to above.

Cincinnati v. Taft, 63 O. S., 141;

U. S. v. Jefferson Electric Mfg. Co., 291 U. S., 386;

Crawford on Stat. Cons., Sec. 303.

It is a well established principle of law that it is the intent of the Legislature that all its enactments which are not repealed should be given effect. State v. Blake, 2 O.S., 147; Benckenstein v. Schott, 92 O. S., 29.

When later statutes are enacted or amendments made to existing statutes relating to the same subject matter or the same scheme of legislation as that to which an existing statute relates, and the existing statute is not changed, the new statutes or amendments unless repugnant to the former statute should be regarded as a part of the same scheme of legislation and all the statutory provisions in *pari materia* should be harmonized if possible.

All the amendments of Sections 7896-25 and 7896-32, General Code, hereinbefore referred to, may be harmonized with Section 7896-40, General Code, in my opinion, at least to the extent that none of them amounts to a repeal by implication of any of the provisions of Section 7896-40, General Code.

As stated in the earlier part of this opinion, I believe that the provisions of Section 7896-40, General Code, standing alone, clearly place the Retirement Board under the duty of returning or tendering the return of a contributor's contributions after ten years have elapsed from the

time he ceased active service as a teacher, and I believe that was the intent of the Legislature when the law was enacted in 1919, and that none of the provisions of the Act mentioned conflicted in any wise with the provisions of the said Section 7896-40, General Code. Later, it was sought to protect the status of teachers in the Retirement System by granting them leaves of absence under certain conditions so as to save their membership in the system, which they otherwise would have lost by inaction under the terms of the Act as it was first enacted. Sections 7896-25 and 7896-32, General Code, were amended from time to time to that effect, as has been noted above. The granting of leaves of absence as authorized by the amended statutes was somewhat inconsistent with the provision that membership should cease by withdrawal of contributions. A part of the time there have been in force provisions of law for the saving of a member's status, which otherwise would have been lost by his withdrawal of his accumulated contributions, by his returning the contributions withdrawn. By the enactment of those provisions, there was manifested in my opinion, an intent that the provisions of Section 7896-40, General Code, should be in effect literally in accordance with its terms, and while those provisions were in force, I am of the opinion that the Retirement Board was not obligated to hold the accumulated contributions of teachers beyond the period of ten years after the cessation of active service of the teacher. When those provisions were not in force (and that is the situation today, because of the amendment of Section 7896-25, General Code, in 1939) there existed some conflict between the granting of leaves of absence without loss of status and compelling the teacher to withdraw his contributions whereby the law provided he lost his membership in the Retirement System. This conclusion is on the assumption that the term "withdrawal" as used in the statute, indicates both voluntary withdrawal on demand as well as the "return" by the Retirement Board, which technically may be somewhat questionable. Such a construction of the term at least has the merit of being in accord with the administrative practice and the construction placed upon the word by the Retirement Board ever since the law was enacted. It is well settled that administrative practice if long continued will be given great weight at least in the construction of the law appertaining thereto where no clear provisions of the law provide to the contrary. While such administrative interpretation is not conclusive, the courts have remarked that it should be accorded great weight and will be reckoned with most seriously. It has sometimes been said that such interpretation will not be disregarded unless clearly out of line with the terms of the law and

necessarily must be disregarded to protect rights granted by the law.

State, ex rel. Crabbe v. Middleton Hydraulic Co.,
114 O.S., 437;

State, ex rel. Auto Machine Co. v. Grown,
121 O.S., 73;

State, ex rel. Bramer v. Groves,
89 O.S., 24;

State, ex rel. Gallinger v. Smith,
71 O.S., 13;

Hannan v. Heeking,
88 O.S., 207;

Industrial Commission v. Brown,
92 O.S., 309.

You state in your communication:

“Due to the fact that apparently Section 7896-40, General Code, conflicts with Section 7896-32, and Section 7896-25, General Code, we have not required teachers who have been out of service ten or more years to withdraw their accumulated contributions and we have teachers who have left their contributions beyond this period of time in order that if they ever return to teaching they might establish their full credit with the Retirement System.”

It is true, that most of the time at least, since 1930, at which time the first ten year period after the enactment of the Teachers Retirement Law expired, no means were provided whereby a teacher could be restored to membership and credit for his prior service reestablished after it had been lost by withdrawal of his contributions and at no time has means been provided by law whereby he might demand such restitution even by repaying the amount withdrawn with interest.

The Ninety-fourth General Assembly enacted House Bill No. 268, wherein Section 7896-25, General Code, was again amended by the addition thereto of the following:

"A year of contributing membership in any state retirement system, established under the laws of Ohio for the employes of any branch or branches of the public service, shall revalidate service in the state teachers retirement system of Ohio which was lost by expiration of membership, provided such member has not retired on superannuation retirement or has not withdrawn his accumulated contributions. Such year of service shall make such person eligible for an indefinite leave of absence from the state teachers retirement system as provided for in this act.

A member who has withdrawn his accumulated contributions may restore his status as a present teacher by redepositing in the teachers' savings fund the amount withdrawn with interest at four per centum per annum from the date of withdrawal to the date of redeposit and by depositing in the employers' accumulation fund the amount that would have been paid in by the employer for the normal contribution for such member with interest on such amount at four per centum from the date his deposits were withdrawn to the date of reestablishing membership. No teacher shall take advantage of this provision for the restoration of membership more than once."

Said House Bill No. 268 was passed April 21, 1941, approved by the Governor on May 1, 1941, and filed in the office of the Secretary of State on May 2, 1941. It will become effective on July 31, 1941 unless a referendum thereupon is invoked.

By the amendment of Section 7896-25, General Code, as contained in House Bill No. 268, the terms of which are self-executing with respect to the restoration of status in the Retirement System upon repayment by the teacher of his accumulated contributions which had been withdrawn and the deposit of sufficient amount to correspondingly rehabilitate the employer's accumulation fund, the Legislature has placed the means for a teacher to reestablish his status after it may have been lost for the reasons stated, within his own reach, and has thereby, in my opinion, evinced an intent to cause Section 7896-40, General Code, to be fully effective according to its obvious import.

I am therefore of the opinion that until Section 7896-25, General Code, as amended in House Bill No. 268, of the Ninety-fourth General Assembly becomes effective the Teachers Retirement Board may not require teachers who have ceased active service as such, to withdraw or accept the return of their accumulated contributions in the State Teachers Retirement System. After the effective date of Section 7896-25, General Code, as amended in House Bill No. 268, it is the duty of the

Teachers Retirement Board to return or tender the return of the accumulated contributions in the Teachers Retirement System of all teachers who have ceased active service as such, for a period of ten years and who have not previously demanded such a return. After the expiration of a period of ten years from the last service as a teacher, and upon the tender of the return to him of his accumulated contributions in the Teachers Retirement System by the Retirement Board the accumulation of interest thereon will cease.

Respectfully,

THOMAS J. HERBERT,

Attorney General.