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TEACHERS RETIREMENT BOARD, STATE—MAY ESTABLISH RATE PER CENTUM OF INTEREST TO BE PAID UPON RETIREMENT OF MEMBER ON INDEFINITE EXTENSION OF MEMBERSHIP—RATE MAY BE OTHER THAN FOUR PER CENTUM PER ANNUM COMPOUNDED ANNUALLY.

SYLLABUS:

The State Teachers' Retirement Board, may pursuant to Section 7896-1 of the General Code, establish a rate per centum of interest to be paid upon the retirement of a member on indefinite extension of membership other than the rate of four per centum per annum, compounded annually.

Columbus, Ohio, October 6, 1949

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads:

"We are enclosing herewith a letter received from R. E. Kirk, State Examiner in charge of the current examination of the records of the State Teachers Retirement System, requesting interpretation of the provisions of Section 7896-56, G. C., relative to the rate of interest to be used in computing the annuity granted members of the Teachers' Retirement System at retirement after indefinite extension of membership as authorized in Section 7896-35, G. C.

"May we respectfully request that you examine the enclosed letter and the statutes governing the rate of interest to be credited

to the annuity reserve of a member at retirement, and give us your formal opinion in answer to the following question:

“Upon retirement of a member of the State Teachers Retirement System, does the retirement board have authority to establish a rate per centum of interest which shall be paid on said member’s contributions, other than the rate of four per centum per annum compounded annually?”

The enclosed letter submitted to you by your examiner Mr. Kirk is noted. It is further noted that the question submitted resulted from a resolution adopted July 13, 1945, by the State Teachers Retirement Board, which reads as follows:

“BE IT RESOLVED by the Retirement Board of the State Teachers Retirement System that under authority of the provisions of Section 7896-1 G. C., regular interest be fixed at the rates indicated for purposes outlined in the following list:

- I On accumulated contributions:
 - A. During contributing membership:
 - 1. Simple 0% 2%
 - 2. Compound 2% 4%
 - B. During non-contributing membership:
 - 1. First two years 2% 4%
 - 2. Third to tenth years, inclusive.... 2% 4%
 - 3. Eleventh year and thereafter (Eff. 9-1-1945)
 - a. *Less than 10 years of service*... 0% 2%
 - b. *Indefinite extension of membership* 1% 2%
 - c. *Indefinite leave of absence*..... 2% 4%
- II On deposits for credit for outside service... 1% 2.5%
- III On deposits for additional annuity..... 1% 2.5%

and BE IT FURTHER RESOLVED by said Board that on deposits for additional annuity, interest be credited on August 31 on the smallest amount on deposit for the entire preceding year.”

The question presented evolves around the definition of “regular interest” as defined in Section 7896-1 of the General Code. The history pertaining to said definition is pertinent in that it would be a guide in

ascertaining the intent of the legislature as to its application by the Teachers Retirement Board.

Provisions for a state-wide retirement system for teachers in schools supported wholly or in part by public funds was originally enacted by the General Assembly in 1919 (108 O. L., Pt. 1, 196). At that time certain words and phrases were defined in Section 7896-1. "Regular interest" was defined then to mean "interest at four per centum per annum, compounded annually." No changes were made as to the above definition until 1941 (119 O. L. 247, at page 252), at which time the above section, so far as same relates to "regular interest," was repealed and the following definition adopted:

"'Regular interest' (and the term 'uniform interest' as used in section 7896-56, paragraph (d) of the General Code) 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 the employ's regular contribution with interest at the rate of four per centum per annum, compounded annually. Provided further, however, that in the purchase of out-of-state service credit as provided in section 7896-30 of the General Code, and in the purchase of additional annuity, as provided in section 7896-56, paragraph (c) of the General Code, interest shall be computed and credited to reserves therefor at such rate or rates as the retirement board shall fix as regular interest thereon."

At the time the above definition was adopted, the legislature stated its purpose for adopting same, said purpose being:

"* * * for the purpose of reducing interest rates paid on accounts of non-retiring members of the * * * state teachers retirement system * * * and of meeting the emergency resulting from low interest rates."

This section was further amended in 1945, 121 O. L. 221, and at the present time it provides in part as follows:

"'Regular interest' (and the term 'uniform interest' as in section 7896-56, paragraph (d) of the General Code) 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 the 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 out-of-state service credit as provided in section 7896-30 of the General Code, and on additional direct deposits for the purpose of providing additional annuity as provided by section 7896-43 of the General Code, and also on the accumulated contributions of members with indefinite extension of membership as provided by section 7896-35 of the General Code of Ohio, interest shall be computed and credited to reserves, deposits, and accumulated contributions at such rate or rates as the retirement board shall fix as regular interest thereon."

It should be observed that Section 7896-1, supra, states first, that 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," followed, however, by certain provisos, viz., (1) "that upon retirement the annuity granted any member shall have a reserve equal to the total of the employe's regular contributions with interest at the rate of four per centum per annum, compounded annually," (2) "that in the purchase of out-of-state service credit as provided in section 7896-30 of the General Code, and on additional direct deposits for the purpose of providing additional annuity as provided by section 7896-43 of the General Code, interest shall be computed and credited to reserves, deposits, and accumulated contributions at such rate or rates as the retirement board shall fix as regular interest thereon," and (3) "on the accumulated contributions of members with indefinite extension of membership as provided by Section 7896-35 of the General Code of Ohio, interest shall be computed and credited to reserves, deposits, and accumulated contributions at such rate or rates as the retirement board shall fix as regular interest thereon."

Does the purpose for which Section 7896-1 was amended in 1941 prevail as to the latter amendment? I think not, the answer being in Section 7896-35 of the General Code, in which there is definitely a distinction made by and between those members who regularly contributed and were retired as regular teachers and those who ceased making contributions and retired subsequent to being given an indefinite extension of membership. That part of Section 7896-35 of the General Code pertinent to the instant question reads as follows:

"* * * Any member or former member with ten or more years of service credit, and whose accumulated contributions

during such period of service have not been withdrawn, shall be given an indefinite extension of membership beginning with the third year following his last contributing membership, and provided he does not qualify for indefinite leave of absence under other provisions of this act. During such extension of membership he shall retain all the rights and privileges of a member and may upon application be granted a superannuation retirement allowance, under the provisions of this section, or upon application may be granted a commuted superannuation retirement allowance as provided by section 7896-36 of the General Code of Ohio."

In Crawford, Statutory Construction, "Interpretation of Laws," at page 129, it is said:

"A proviso, * * * is a clause added to an enactment for the purpose of acting as a restraint upon, or as a qualification of the generality of the language which it follows. Sometimes, however, as a precautionary measure, it is used to explain the general words of the act and to exclude some ground of misinterpretation which would extend it to cases not intended to be brought within its operation or purview. Some cases apparently ascribe three functions to the proviso: (1) To exempt something from the enacting clause; (2) To qualify or restrain its generality; (3) And to exclude some possible misinterpretation of it as extending to cases not intended by the legislature. * * * the proviso should not be used to enlarge the operation of a statute, * * *. Moreover, in actual practice, and as a general rule, the proviso is introduced by the word 'provided,' although the use of this word is not mandatory. In fact, amendments are often added to statutes by use of this same word."

In view of the foregoing, it is therefore my opinion that the State Teachers Retirement Board may, pursuant to Section 7896-1 of the General Code, establish a rate per centum of interest to be paid upon the retirement of a member on indefinite extension of membership other than the rate of four per centum per annum, compounded annually.

Respectfully,

HERBERT S. DUFFY,
Attorney General.