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PUBLIC EMPLOYES RETIREMENT BOARD—ELECTED PURSUANT TO PROVISIONS OF SECTION 486-34, G. C.—IN EVENT MEMBERS CEASE TO BE PUBLIC EMPLOYES—PERMISSIBLE TO RETAIN OFFICES SO LONG AS ACCUMULATED CONTRIBUTIONS ARE NOT WITHDRAWN—THEY SHOULD LEAVE CONTRIBUTIONS IN FUND AS PROVIDED BY SECTION 486-65a, G. C.

SYLLABUS:

It is permissible for the employe members of the public employes retirement board elected pursuant to the provisions of Section 486-34, General Code, to retain their offices as members of said board in the event that they cease to be public employes, so long as they do not withdraw their accumulated contributions, but leave the same in the system as provided by Section 486-65a, General Code.

Columbus, Ohio, September 28, 1945

Mr. Fred L. Schneider, Secretary, Public Employes Retirement System
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“Is it permissible for one of the four employe member representatives on the Public Employes Retirement Board to retain his office as a member of the Board in the event he is no longer employed as a public employe? It should be added that the member has retained his membership in the Public Employes Retirement System on a leave of absence basis as authorized in Section 486-65a of the General Code of Ohio.”

The Public Employes Retirement System is organized under the provisions of Sections 486-32 to 486-75, inclusive, of the General Code. Provision is made in Section 486-34, General Code, for the general administration and management of the system by a board to be known as the “public employes retirement board”. That section reads as follows:

“The general administration and management of the public employes retirement system and the making effective of the provisions of this act are hereby vested in a board to be known as the ‘public employes retirement board,’ which shall consist of seven members as follows: The attorney general, the auditor of state, the chairman of the state civil service commission, and four other members known as employe members, one of whom shall be a *state employe member of the retirement system* and who shall be elected by ballot *by the state employe members* of the retirement system *from among their number*, another of whom shall be a *county employe member of the retirement system* and who shall be elected by ballot *by the county employe members* of the retirement system from among their number, another of whom shall be a *municipal employe member of the retirement system* and who shall be elected by ballot by the *municipal employe members* of the retirement system from among their number, and another of whom shall be a park district or a conservancy or a health or a public library or a township *employe member of the retirement system* and who shall be elected by ballot by the park district, conservancy, health, township and public library *employe members* of the retirement system from among their number, in a manner to be approved by the retirement board.”

(Emphasis added.)

As the law now stands, all appointive employes of the state and of all municipalities, counties, townships, park districts, conservancy districts, health districts and public libraries automatically become members of the retirement system when they become such employes. There are a few exceptions to this requirement in the case of employes engaged in work of a temporary, casual or exceptional nature, but these exceptions are not pertinent to the question here presented.

Section 486-65, General Code, provides as follows:

“A contributor who ceases to be a state employe for any cause other than death or retirement, and subject to such rules and regulations as may be established by the retirement board, 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 state employes’ 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 representative. If the contributor or his legal representatives cannot then be found, his accumulated contributions shall be forfeited to the retirement system and credited to the income fund.”

Section 486-65a, General Code, reads as follows:

“Membership shall cease upon refund of accumulated contributions or upon retirement except as provided in Section 486-64 of the General Code, relative to disability retirement. A member who separates from his service as a public employe for any reason other than death or retirement may leave his accumulated contributions, if any, on deposit with the retirement board and, for the purposes of the retirement system, be considered on a leave of absence for a period of five years. At the end of said five year period, if such member has not returned to active service as a public employe, and such member has ten years or more of service, the retirement board may, upon application, grant said member an indefinite leave of absence; if such member has less than ten years of service, the retirement board may, upon application grant such additional leave as the retirement board may deem proper, providing that such additional leave shall not exceed a period of five years. A member who ceases to be a state, county, municipal, park district, conservancy, health, township, or public library employe and who does not withdraw the accumulated contributions standing to his credit in the employe savings fund and who subsequently becomes eligible and

accepts membership in any other retirement system established under the provisions of the laws of this state or of any charter shall be considered for retirement purposes as being on an indefinite leave of absence as long as such member retains membership in such other retirement system. *Members on such leaves of absence shall retain all rights and privileges of membership in the retirement system.* Members who separated from the state service subsequent to October 20, 1933, and prior to January 1, 1935, shall be considered upon such leave."

(Emphasis added.)

It will be noted that under the provisions of the last quoted section, membership in the system shall cease upon refund of accumulated contributions or upon retirement except in case of a disability retirement. It will be noted further, that a member of the system who separates from his service as a public employe for any reason other than death or retirement may leave his accumulated contributions with the system and "for the purposes of the retirement system, be considered on a leave of absence". This leave of absence is for an initial period of five years, with the right of the board under certain circumstances to extend it. Every portion of the section last quoted clearly contemplates that *although a person may have retired from service as a public employe, he still remains a member of the system*, provided he leaves his accumulated contributions on deposit. He is a member as the statute states, on leave of absence. During such leave of absence, he is certainly a "public employe member".

I call your attention particularly to that sentence which reads: "Members on such leave of absence shall retain *all rights and privileges of membership* in the retirement system". Words could hardly be found which would be plainer in their meaning than these.

Recurring to Section 486-34 supra, it will be observed that the statute does not provide that the four non-official members are to be "state employes" or "county employes" or "municipal employes" or "employes" of the miscellaneous group of employers, but, on the contrary, they are to be "employe members". Furthermore, this section explicitly provides that the state employe member of the board shall be elected by ballot "by the state employe members" of the retirement system "from among their number". Like provision is made as to the qualification of those who may vote for each of the other employe members of the board. I direct attention also, to Section 486-37, General Code, which provides, in part: "Any

member of the retirement system shall be eligible for election as a member of the retirement board * * *".

It is therefore quite clear from the provisions of the law that a public employe who becomes a member of the system by reason of his employment, retains his membership by leaving his contributions in the fund even though he quits the public service, and that he continues to be an employe member while on leave of absence. It is equally clear that anyone who is an employe member has a right to be elected as a member of the board and his fellow employe members have a right to vote for his election even though the member so proposed for election is a member on leave of absence and those who vote for his election are also members on leave of absence. They all have as the statute says, *all* the rights and priveleges of membership. It is manifest that the General Assembly has recognized the rights of members thus on leave of absence, since their contributions are in the hands of the system just as certainly as are the funds of those who are presently holding public positions and making current contributions, and such members on leave have an equal interest in the management of the system and the proper administration of such funds.

Specifically answering your question, it is my opinion that it is permissible for the employe members of the public employes retirement board elected pursuant to the provisions of Section 486-34, General Code, to retain their offices as members of said board in the event that they cease to be public employes so long as they do not withdraw their accumulated contributions but leave the same in the system as provided by Section 486-65a, General Code.

Respectfully,

HUGH S. JENKINS

Attorney General