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1. FIREMEN OR POLICEMEN — NEWLY APPOINTED — SELECTED FROM DULY AUTHORIZED CIVIL SERVICE ELIGIBLE LIST— IS A “MEMBER OF THE DEPARTMENT” — SERVING PROBATIONARY PERIOD — SUBJECT TO DEDUCTIONS FROM PENSION ASSESSMENT — COMPUTATION TO START FROM DATE OF APPOINTMENT AND INCLUDE PERIOD SERVED AS PROBATIONER — SECTIONS 741.12, 741.23 RC.
2. PERIOD OF ELIGIBILITY — MEMBER TO QUALIFY IN FIRE OR POLICE DEPARTMENT—RETIREMENT OR DISABILITY BENEFITS—TIME COMMENCES TO RUN FROM DATE OF APPOINTMENT, NOT FROM EXPIRATION OF PROBATIONARY PERIOD—CARDINAL REQUIREMENT—YEARS OF ACTIVE SERVICE IN DEPARTMENT — SECTIONS 741.18, 741.49 RC.

SYLLABUS:

1. A newly appointed fireman or policeman selected from a duly authorized civil service eligible list is a “member of the department” while serving his probationary period, and as such, is subject to the deductions for pension assessment as provided by Sections 741.12 and 741.23, Revised Code, from the date of his appointment, including the period in which he serves as a probationer.

2. The period of eligibility to qualify a member of a fire or police department for retirement or disability benefits as provided by Sections 741.18 and 741.49, Revised Code, commences to run from the date of appointment and not from the expiration of the probationary period, the statute making the "years of active service in the department" the cardinal requirement.

Columbus, Ohio, May 7, 1954

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

Your request for my opinion, contains the following questions :

"(1) Is a newly appointed policeman or fireman covered for death or disability during the first ninety days of his appointment, which is the probationary period?

"(2) Does his twenty-five year retirement service requirement date from the date of appointment?

"(3) Should pension contributions be deducted during the probationary period?

"I presume that the appointment referred to was made from a civil service eligible list."

Prior to the 1939 amendment of Section 4625, General Code, deductions from salaries for pension purposes could only be taken from members of police or fire departments who voluntarily agreed to such deductions; nor were such voluntary contributions refundable after separation from the service. Opinion No. 6840, Opinions of the Attorney General for 1944, page 219. By said amendment, and as currently provided by Sections 741.12 and 741.43, Revised Code, such deductions have been made compulsory and can only be withdrawn in case of voluntary resignation as provided by Sections 741.18(I) and 741.49(I), Revised Code, or when a fireman or policeman becomes a member of a municipal retirement system under charter provisions as provided by Sections 741.08 and 741.37, Revised Code.

Sections 741.12 and 741.43 provide that in each municipality where there is established a police and firemen's relief and pension fund, the treasurer of the municipal corporation shall deduct from each "member of the (fire or police) department," an amount equal to four percent of

his salary for each payroll period, and that the sums so deducted shall be credited to the pension fund. Sections 741.01 and 741.31 define a member of such department, particularly as applicable to a newly appointed member, as "any person who receives an original appointment from a duly established civil service eligible list."

It is evident from the language of the statute that in defining "member of the department" as one who received an original appointment from an established civil service eligible list, especially as applicable to new appointees, the legislature had intended to make that qualification the cardinal requirement. Had it intended to exclude probationers, it would have done so by clear and appropriate language. It is a general rule that courts will make no exceptions to the provisions of a statute not made by the act itself. 37 Ohio Jurisprudence, page 783, Section 454.

It is equally the rule that the term of office, in the absence of constitutional or statutory provisions to the contrary, begins to run from the date of appointment. 32 Ohio Jurisprudence, page 1038, Section 183; 43 American Jurisprudence, page 15, Section 155. Hence, the date when appointees receive their original appointment, is the time when the deductions for their contributions to the fund attach.

What is true of deductions is equally applicable to coverage. Sections 741.18 and 741.49 provide that a member of the fund who has completed twenty-five years of "active service in the department" shall receive an annual pension and provide for disability benefits if "disabled as a result of the performance of his official duties as a member of the department." Sections 741.19 and 741.49(I) provide for giving credit toward retirement for the time he was disabled "at any time during his period of employment". No one could contend that an appointee serving his probationary period is not engaged in "active service in the department," or not performing "official duties," or not serving "his period of employment." within the meaning of the statute. In this respect the status of a probationer is no different from one provisionally appointed—both are holding their positions under inchoate appointments and both are entitled to their salaries and to the protection of the civil service act while serving in such capacities. *State ex rel. Slovensky v. Taylor*, 135 Ohio St., 601; *State ex rel. Conway v. Taylor*, 136 Ohio St., 174; *State ex rel. Altman v. McDonough*, 132 Ohio St., 47.

A somewhat similar question was involved in Opinion No. 7246,

Opinions of the Attorney General for 1944, page 675, which held that a person who had received a provisional appointment as a member of a fire department in accordance with the provisions of the Civil Service Act, and who was serving as such, was a "member of the department" and thus subject to the obligations and entitled to the benefits of the firemen's relief and pension fund. Surely, if a provisional appointee is covered by the pension laws, an appointee from a duly established civil service eligible list cannot be excluded merely because he has not served his full probationary period.

To the same general effect, the Supreme Court in *Bigam v. Hainen*, 150 Ohio St., 371, defining the term "years of service," has held it to include the period represented by the total number of years of service rendered in the governmental department in which the person is employed, and not merely the years of service in any particular grade or rank of the service.

Accordingly, in specific answer to your questions, it is my opinion and you are advised that:

1. A newly appointed fireman or policeman selected from a duly authorized civil service eligible list is a "member of the department" while serving his probationary period, and as such, is subject to the deductions for pension assessment as provided by Sections 741.12 and 741.23, Revised Code, from the date of his appointment, including the period in which he serves as a probationer.

2. The period of eligibility to qualify a member of a fire or police department for retirement or disability benefits as provided by Sections 741.18 and 741.49, Revised Code, commences to run from the date of appointment and not from the expiration of the probationary period, the statute making the "years of active service in the department" the cardinal requirement.

Respectfully,

C. WILLIAM O'NEILL

Attorney General