

447

- I. RETIREMENT SYSTEM, PUBLIC EMPLOYEES—PUBLIC EMPLOYEE WHO FORFEITED RIGHTS AS A MEMBER BY WITHDRAWING HIS ACCUMULATED CONTRIBUTIONS—TO BE RESTORED TO ANNUITY RIGHTS, IF WITHIN FIVE YEARS EMPLOYEE RETURNS TO SERVICE, HE MUST RESTORE TO EMPLOYEES SAVINGS FUND, HIS ACCUMULATED CONTRIBUTIONS AS THEY WERE AT TIME OF SEPARATION—INTEREST FROM DATE OF WITHDRAWAL TO TIME OF REDEPOSIT MUST BE INCLUDED—SECTION 486-57 G. C.

2. RETURN TO SERVICE MUST BE TO A POSITION THAT FALLS WITHIN PURVIEW OF SYSTEM—MEMBERSHIP MAY NOT BE ATTAINED IN ANY OTHER RETIREMENT SYSTEM—SECTIONS 486-32 TO 486-75 G. C.

SYLLABUS:

1. Under the provisions of Section 486-57, General Code, a public employe who has forfeited his rights as a member of the public employes retirement system by withdrawing his accumulated contributions, and within five years thereafter returns to public service, must if he desires to be restored to his annuity rights in such retirement system, restore to the employes savings fund of said system within said five year period, his accumulated contributions as they were at the time of his separation, together with regular interest thereof from the date of withdrawal to the time of reposit.

2. The return to service contemplated by Section 486-57, General Code, must be to a position that falls within the purview of the public employes retirement system (Sections 486-32 to 486-75, General Code) and the conditions set out in said Section 486-57 would not be complied with by attaining membership in any other retirement system.

Columbus, Ohio, September 17, 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:

“Under the provision of Section 486-57, General Code, it is provided that a public employe who returns to public service and to membership in the retirement system within five (5) years after having relinquished his membership through withdrawal of his accumulated contributions, may restore the annuity rights forfeited by him at the time of separation by repositing his accumulated contributions as they were at the time of separation together with regular interest thereon.

Apparently it is necessary that a public employe who has forfeited his annuity rights must return to public service within the specified five years in order to be eligible to restore the forfeited rights. However, we are specifically interested in your opinion upon the two following questions:

(1) In addition to the requirement that a public employe who has withdrawn his accumulated contributions must return to public service within five years to be eligible to restore the for-

feited annuity rights is it required too that the accumulated contributions plus interest be redeposited within the five-year period?

(2) Would a former member of the Public Employes Retirement System, who had withdrawn his accumulated contributions and had not returned to membership in this system within the five-year period, but who became a member of one of the two other state retirement systems, i. e., Teachers Retirement System or School Employes Retirement System, within the required five-year period be permitted to redeposit in the Public Employes Retirement System the refunded amount with interest?"

The words "state employe" used in certain sections of the public employes retirement act (Sections 486-32 to 486-75, General Code) to which reference may be made, are to be construed as including all public employes who come within the purview of the public employes retirement act as it now exists. This is by virtue of Section 33c enacted in 1938, whereby the provisions of the theretofore existing "state employes retirement system" were extended to include employees of the various political subdivisions.

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

"A contributor who ceases to be a state employe 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 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 guarantee fund."

The pertinent portion of 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."

The effect of the two sections from which I have quoted is that a person who has been a contributing member of the retirement system and who ceases to be a public employe within the scope of the system for any other cause than death or retirement may if he desires leave his accumulated contributions with the system, and have a leave of absence from active membership for a total of ten years, or he may withdraw his accumulated contributions. If he does withdraw his contributions, he *ceases to be a member* of the system, which of course would relieve him from any of the burdens or obligations incident to membership and would deprive him of all rights or benefits which had attached to such membership.

At this point Section 486-57, General Code, to which you refer, introduces a new provision, which is obviously a favor to one who has thus lost his membership and accompanying benefits. It provides:

"Should a state employe who separates from his service as a state employe and relinquishes his membership in the retirement system through withdrawal of his accumulated contributions, *return within five years, and restore* to the employes' savings fund, his accumulated contributions as they were at the time of his separation, together with regular interest thereon (from) the date of withdrawal to the date of redeposit, the *annuity rights forfeited* by him at the time of separation *shall be restored* and his obligations as a member of the retirement system shall resume."
(Emphasis added.)

Manifestly, one who has been in the public employ and has quit it, and has withdrawn from the retirement system, may again enter the public service. If he does so re-enter the public service, whether after one year or twenty, he would automatically, again become a member of the retirement system and would start anew with the obligation of contribution and with the rights of building up a retirement allowance by virtue of such contributions the same as any other person who becomes a public employe. This result would follow wholly independently of Section 486-57

supra, by reason of the general provision of Section 486-33, General Code, which provides that subject to certain specific exemptions, membership in the system shall be compulsory for all state employes, and Section 486-33c, General Code, which likewise provides that membership shall be compulsory for all employes of the other subdivisions coming within the scope of the act.

Coming then, to Section 486-57, General Code, which I have quoted, it will be noted that if a person who has withdrawn his accumulated contributions and thereby relinquished his membership in the retirement system should return to public employment within five years and restore to the employes savings fund his accumulated contributions as they were at the time of his separation, together with interest, the *annuity rights forfeited* by him shall be *restored* and his *obligation as a member* of the system *shall resume*. In other words, by making this repayment he may bring himself into the system not merely as a new member but as a reinstated member with the restoration of the annuity rights which he would have received had he never retired from the system. The first question you raise is as to the *time when* he must make this repayment of his withdrawn contributions in order that he may be restored to his annuity rights. Is it contemplated by the law that he must make such repayment at the very time *when he returns* to the public service, or may he return to service early in the five-year period and take the remainder of that period to decide whether he shall make the redeposit, or may he merely return to service within the five-year period and make his decision and redeposit ten or twenty years thereafter?

It seems plain that the "five years" is not limitation on the time within which one who has given up a public employment may return to the same or another position of public employment. Certainly he may return, if he has an opportunity, at any time. It is equally obvious that one who does return to public service *after* five years absence therefrom, is excluded from the provisions of Section 486-57, supra, and can not avail himself of its benefits. The necessary conclusion is that the limitation is designed to govern his privilege of making the redeposit, and it appears to me to be a reasonable interpretation of the legislative intent to conclude that the exercise of the privilege is to be within five years from the date of such withdrawal.

To hold that the returning employe must exercise his privilege and return his deposit on the very day he returns to service, would impose a harsh burden on the employe, and I cannot construe the language used in the statute as having that meaning. It would give the retirement board no opportunity to advise such employe of his rights, since the board will normally not even know that he is again in the public employ until the lapse of one or more months, when his name appears on the payroll.

If we should reach the conclusion that the returning employe has an unlimited time within which to make his redeposit, that interpretation would create an uncertainty that would seriously hamper the retirement board in carrying out the purposes of the system by keeping it economically and actuarially sound. There ought not be held over the board the uncertainty whether a large number of returning employes might at their own whim, at any time in the future, decide to throw in their withdrawn contributions and thereby impose upon the board the burden of finding funds with which to match such contributions, and further funds out of which to meet the obligations of prior service pensions which would again arise in favor at least of those who had previously been "original members" of the system. (See 1944 Opinions Attorney General, p. 530.)

In this connection mention should be made of Section 486-50, General Code, which requires the retirement board, at stated intervals to have made an actuarial report of the assets and liabilities of the system, based upon the "mortality and service experience of the members of the system." This report becomes the basis upon which the board determines the rate which the state and employing subdivisions must pay to meet the accruing obligations of the system, and it would manifestly be out of line with the policy of keeping the system sound to introduce an element of total uncertainty based on the caprice of members who return to the system.

Accordingly, it is my opinion that under the provisions of Section 486-57, General Code, a public employe who has forfeited his rights as a member of the public employes retirement system by withdrawing his accumulated contributions, and within five years thereafter returns to public service, must if he desires to be restored to his annuity rights in such retirement system, restore to the employes savings fund of said system within said five-year period, his accumulated contributions as they were at the time of his separation, together with regular interest thereon from the date of withdrawal to the time of redeposit.

In your second question you raise the inquiry whether a former member of the public employees retirement system who had withdrawn his accumulated contributions and had not returned to membership in the system within the five-year period, but who became a member of one of the other two state retirement systems, to-wit, teachers retirement system or school employes retirement system, within the required five-year period, would be permitted to redeposit in the public employes retirement system the contributions which he had previously withdrawn.

Your system and the other two systems named were created by statutes passed at different times. Each is set up complete by its own law, and each is under its own board, wholly independent of the other. The general assembly has seen fit to require cooperation among these systems to a very limited degree. Section 486-33c, General Code, provides that with certain limitations a member of your system may hold a membership in one of the other systems or in a system established under a municipal charter. Section 486-63a contains this provision:

“Any other provisions of law to the contrary notwithstanding:

(a) A member of the public employes retirement system who has ceased to be an employe as defined in this act, and who is also a member of either the state teachers retirement system or the school employes retirement system, or both, hereafter referred to as the state retirement systems, shall not be entitled to withdraw his accumulated contributions.”

The same section provides for cooperation in the payment of disability or superannuation allowances when one has acquired rights under two or all of the three systems. Except for these provisions, I find no connection between the several systems. Each relates to public employes of classes distinct from those embraced in the others. Section 486-57 supra, speaks of a “state employe” who “separates from his service as a state employe and *relinquishes his membership* in the retirement system”, and provides that he may “return” within five years, and that by making repayment of the contributions which he had withdrawn “the annuity rights forfeited * * * shall be restored and his obligations as a member of the retirement system shall resume.”

It would be impossible, in the absence of any words in this section referring to either of the other retirement systems, to construe the language used as having any reference whatever to any system other than

the public employes retirement system or to consider the word "return" as having any other meaning than a return to membership in the public employes retirement system, and I am therefore of the opinion that your second question must be answered in the negative.

Respectfully,

HUGH S. JENKINS

Attorney General