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1. FIREMEN'S RELIEF AND PENSION FUND—POLICE—ANY SUCH FUND MAY RECEIVE FROM AUDITOR OF STATE IN MARCH, 1948, OR IN MARCH OF ANY YEAR THEREAFTER WARRANT FOR PAYMENT FROM STATE TREASURY AMOUNT PRESCRIBED BY SECTION 4631-4 G.C.—REQUISITE—COMPLIANCE WITH STATUTE.
2. GRANTED PENSIONS SHALL CONSTITUTE VESTED RIGHTS—SECTIONS 4612-1, 4628-1 G.C.—WITHIN POWER OF GENERAL ASSEMBLY TO ENACT SECTIONS 4612-4, 4628 G. C.—STATUTES SUSPENDED PAYMENT OF ALL PENSIONS AND DISABILITY PAYMENTS FROM FIREMEN'S AND POLICE RELIEF AND PENSION FUND—SO LONG AS RECIPIENT IS HOLDING FULL TIME SALARIED POSITION UNDER STATE OR ANY POLITICAL SUBDIVISION.
3. BENEFITS FROM WORKMEN'S COMPENSATION FUND—GROWING OUT OF INJURY—WILL NOT BAR OR LIMIT RIGHT TO RECEIVE BENEFITS AS MEMBER OF FIREMEN'S RELIEF AND PENSION FUND.
4. SECTION 4612-4 G. C.—HOUSE BILL 195, 97 GENERAL ASSEMBLY—RIGHT OF MEMBERS, FIREMEN'S RELIEF AND PENSION FUND GRANTED DISABILITY BENEFITS TO RECEIVE BENEFITS APRIL 1, 1947.
5. MUNICIPALITY—NOT HAVING IN ITS EMPLOY TWO OR MORE FULL TIME POLICE OFFICERS APPOINTED AFTER EFFECTIVE DATE OF HOUSE BILL 195, 97 GENERAL ASSEMBLY—NOT REQUIRED NOR AUTHORIZED TO ESTABLISH AND MAINTAIN POLICE RELIEF AND PENSION FUND—SECTION 4615-13 ET SEQ., G. C.

6. MUNICIPALITY—POLICE RELIEF AND PENSION FUND ESTABLISHED AFTER EFFECTIVE DATE, HOUSE BILL 195, 97 GENERAL ASSEMBLY—POLICE OFFICERS THEREFORE EMPLOYED IN POLICE DEPARTMENT DO NOT BECOME MEMBERS OF SUCH FUND—IF MEMBERS OF PUBLIC EMPLOYEES RETIREMENT SYSTEM THEY MUST CONTINUE IN SUCH SYSTEM—STATUS AS TO EXEMPTION.
7. NO PROVISION IN LAW FOR POLICE OFFICER WHO RESIGNED TO ACCEPT PRIVATE EMPLOYMENT AND WITHDREW CONTRIBUTIONS TO FUND TO LATER REDEPOSIT SUCH CONTRIBUTIONS.

SYLLABUS:

1. Upon compliance with the conditions set forth in Section 4631-4, General Code, any police or firemen's relief and pension fund may receive from the State Auditor in March 1948, or in March of any year thereafter, a warrant for the payment from the state treasury in the amount prescribed by said Section 4631-4.

2. Notwithstanding the provisions of Sections 4612-1 and 4628-1, General Code, providing that granted pensions shall constitute vested rights, it was within the power of the General Assembly to enact Sections 4612-4 and 4628, General Code, suspending the payment of all pensions and disability payments from the firemen's relief and pension fund and the police relief and pension fund, respectively, so long as the recipient is holding a full time salaried position under the state or any political subdivision.

3. The acceptance by a city fireman of benefits from the workmen's compensation fund, of benefits growing out of an injury, will not bar or limit his right to receive the benefits to which he may be entitled as a member of a firemen's relief and pension fund.

4. Under the provisions of Section 4612-4, General Code, members of the firemen's relief and pension fund who prior to the effective date of House Bill No. 195, of the 97th General Assembly, were granted disability benefits, are entitled to receive such benefits in accordance with the rules and regulations governing the granting of such benefits in force on April 1, 1947.

5. A municipality which does not have in its employ two or more full time police officers appointed after the effective date of House Bill No. 195 of the 97th General Assembly is neither required nor authorized to establish and maintain a police relief and pension fund, under the provisions of Section 4615-13 et seq. of the General Code.

6. Where a municipality establishes a police relief and pension fund after the effective date of House Bill No. 195 of the 97th General Assembly, police officers theretofore employed in its police department do not become members of such fund, but, if they are members of the Public Employes Retirement System they must continue their membership in such system. The fact that such police officer had obtained an exemption from such retirement system would not change his status as to membership in such police relief and pension system.

7. There is no provision in the law relating to the police relief and pension fund, whereby a police officer who has resigned to accept private employment and withdrawn his contributions to such fund may thereafter re-deposit such contributions.

Columbus, Ohio, January 23, 1948

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

I have before me your communication, requesting my opinion and reading in part as follows :

“We are receiving numerous inquiries with reference to the correct interpretation of the new laws pertaining to the establishment, regulation and financing of police and firemen’s relief and pension funds in municipal corporations, as set forth in H. B. 195, enacted by the 97th General Assembly.

“We submit the following questions, based on copies of letters attached hereto, for your consideration, and request that you give us your formal opinion in answer thereto :”

Attached to your letter is a list of questions which I will not here set forth but will treat separately. As a general background, certain facts may be noted regarding the development of the legislation providing for what are now styled the firemen’s relief and pension fund and the police relief and pension fund. Statutes relating to the firemen’s relief and pension fund are embodied in Sections 4600 to 4615-1, inclusive, of the General Code. Sections 4615-2 to 4615-13, which were newly enacted as a part of House Bill No. 195 of the 97th General Assembly, introduced a new feature, to wit, the township firemen’s relief and pension fund. Sections 4616 to 4631-3, relate to the police relief and pension fund. Section 4631-4 relates to all three of the foregoing funds.

The statutes relative to the firemen’s relief and pension fund (formerly known as the firemen’s pension fund) underwent extensive revision

in 1939. Prior to that time it was optional with any municipal corporation having a fire department supported in whole or in part at public expense, to establish such a fund. In the revision of 1939, it was made mandatory for every municipal corporation employing two or more full time employes in such department, to establish such fund. Prior to 1939, the law only provided for voluntary contributions by a member of the fire department, and the effect of such contributions was to increase the pension that might be awarded to him or his beneficiaries. Since 1939 and until the enactment of House Bill No. 195 by the last General Assembly, members were required to contribute two per cent of their salary.

Prior to 1943, it was provided that any municipal corporation having a police department supported in whole or in part at public expense, might establish such fund, and contributions by members were to be voluntary. In 1943 the law was amended and it was provided that in municipalities which established such fund, each member of the police department should contribute two per cent of his salary, up to \$3,600 per annum, with a provision that any member might exempt himself from the system.

In both of these systems, the distribution of the fund was to be in accordance with rules and regulations adopted by the pension board.

House Bill No. 195, referred to in your communication, makes some radical changes in and additions to the statutes above referred to, which will be noted as we proceed. One of these is a new Section 4631-4, General Code, whereby there is provided a subsidy to be paid by the state to each firemen's relief and pension fund, police relief and pension fund and township firemen's relief and pension fund.

Particular attention should be given to the several sections which contain definitions:

"Sec. 4615-1. The following words and phrases as used in Sections 4600 through 4615-1 of the General Code, both inclusive, shall have the following meanings:

'Member of the fire department' shall mean any person *who receives an original appointment* as a fireman from a duly established civil service eligible list, or *who is appointed to a position* in a fire department pursuant to section 4389 of the General Code, or who, on the effective date of this act, is contributing two per cent of his annual salary to a firemen's relief and pension fund established pursuant to section 4600 of the General Code.

‘Member of the fund’ shall mean any person who is contributing four per cent of his annual salary to the firemen’s relief and pension fund established pursuant to section 4600 of the General Code, or who is receiving a pension or disability benefits from said fund as a result of service in the fire department.”

“Section 4615-13 * * *

‘Member of the fire department’ shall mean any person who, on April 1, 1947, *was employed* by a township as a full time regular fireman in a township fire department established pursuant to sections 3298-54 et seq., of the General Code and ‘member of the fire department’ also shall mean any person over twenty-one and under thirty years of age who, after April 1, 1947, *is employed* by a township as a full time regular fireman in a township fire department.

‘Member of the fund’ shall mean any person who is contributing four per cent of his annual salary to the firemen’s relief and pension fund established pursuant to the provisions of section 4615-2 of the General Code.”

“Section 4631-3. The following words and phrases as used in sections 4616 through 4631-2 of the General Code, both inclusive, shall have the following meanings :

1. ‘Member of the police department’ shall mean any person *who receives an original appointment* as a policewoman, policeman or police matron from a duly established civil service eligible list or *who is appointed* to a position in a police department pursuant to section 4384 or 4384-1 of the General Code or who, on the effective date of this act, is contributing two per cent of his annual salary to a police relief and pension fund established pursuant to the provisions of section 4616 of the General Code.

2. ‘Member of the fund’ shall mean any person who is contributing four per cent of his annual salary to the police relief and pension fund or who is receiving a pension or disability benefits from a police relief and pension fund, established pursuant to the provisions of section 4616 of the General Code, as a result of service in the police department.” (Emphasis added.)

It is important to notice that these definitions are not to have the meanings given merely for the purpose of the act but are to have such meanings throughout all of the sections, both old and new, which relate in any way to the several relief and pension systems. It should be noted too that the definition of “member of the fire department” as set out in Section 4615-1, and “member of the police department” as set out in

Section 4631-3, General Code, exclude any member of a fire department of a municipality and any member of the police department of a municipality who had received his appointment prior to the effective date of the act unless he was then a contributor to the pension fund to the extent of 2% of his salary. That these terms include only prospective appointees, was the conclusion in an opinion which I rendered to the Public Employes Retirement System on October 23, 1947, being No. 2327, to which your attention is respectfully called. That opinion called attention to the further fact that a different qualification of "membership" was introduced in the new sections relating to a township firemen's relief and pension fund, in that "member of the fire department" was defined as meaning any person who on April 1, 1947, was employed by a township as a full time regular fireman.

I come now to a consideration of the several questions which you have submitted, as follows:

Question No. 1:

"Where a firemen's relief and pension fund is established in a municipal corporation pursuant to Section 4600, General Code, in any year after the effective date of H. B. 195 (September 25, 1947) and the 4 percent contributions of the members have been deposited to the credit of said firemen's relief and pension fund, as provided in Section 4609, General Code, and the tax levy made as provided in Section 4605, General Code, but the proceeds from such taxes have not been collected and distributed by the county auditor, in such local firemen's relief fund and pension fund entitled to receive the distribution provided in Section 4631-4, General Code, in an amount equal to 1/10 of a mill on each dollar value of real and personal property as listed in the certification by the fiscal officer of such municipal corporation, although the assets of such local fund as of December 31 in such year consisted of members' contributions only?"

Section 4600, General Code, as amended by House Bill No. 195, reads in part as follows:

"In all municipal corporations having fire departments supported in whole or in part at public expense, and employing two or more full time regular members, there shall be established and maintained a firemen's relief and pension fund."

This section proceeds to provide for a board of trustees to administer such fund. Section 4605 provides for the levy of a tax on each munic-

ipal corporation in which a firemen's relief and pension fund has been or is hereafter established pursuant to the provisions of Section 4600.

Section 4631-4, which is a new enactment, is directly pertinent to your question. It reads as follows:

"There is hereby created in the state treasury a fund which shall be designated as the 'local police and firemen's relief and pension fund.' The treasurer of state shall be the custodian of the fund and the fund shall be distributed in the manner provided for in this section. The fiscal officer of each municipal corporation in which a police or firemen's relief and pension fund has been established pursuant to the provisions of sections 4600 or 4616 of the General Code shall, during the month of March, 1948, and each March thereafter, certify to the auditor of state the name of such fund or funds and the total value of the real and personal property as listed for taxation in the municipal corporation. The township treasurer of each township in which a firemen's relief and pension fund has been established pursuant to the provisions of section 4615-2 of the General Code shall, *during the month of March, 1948*, and each March thereafter, certify to the auditor of state the name of the fund and the total value of the real and personal property as listed for taxation in the township and outside of municipal corporations. The auditor of state shall, upon receipt of each certification provided for herein, issue a warrant on the treasurer of state, payable out of the 'local police and firemen's relief and pension fund,' in favor of each police and firemen's relief and pension fund in an amount equal to one-tenth of a mill on each dollar value of real and personal property as listed in the certification, provided, however, no distribution shall be made hereunder to any police or firemen's relief and pension fund in any calendar year if the assets of said fund as of December 31st of the next preceding calendar year are in excess of an amount equal to the assets of said fund as of December 31, 1947, plus an amount equal to one thousand dollars multiplied by the number of members of said fund and, provided further, no distribution shall be made hereunder in the year 1948 or any year thereafter to a police or firemen's relief and pension fund if the legislative body of the municipal corporation or township in which the fund has been created fails to comply with the provisions of sections 4605, 4615-6 or 4621 of the General Code." (Emphasis added.)

It is to be observed that the fiscal officer of each of these funds is required during the month of March, 1948 and each March thereafter, to certify to the Auditor of State the total value of the property listed for taxation in the municipal corporation or the outlying portion of the town-

ship as the case may be. It is further provided that the Auditor "upon receipt of each certification provided for herein" shall issue his warrant on the Treasurer of State for an amount equal to 1/10 of a mill per dollar of such taxable property. Before issuing such warrant, he is required to make a comparison of the actual assets in the fund as of December 31st of the next preceding calendar year with a theoretical sum arrived at by taking the actual assets in that fund as of December 31, 1947, and adding thereto as many thousands of dollars as there are members in said fund. He is forbidden to issue the warrant above mentioned, if the actual assets in the fund as of December 31st of the next preceding year are in excess of such theoretical sum.

The above provision as to the calculation and comparison is somewhat confusing. On first impression, it might appear that no such calculation could be made and no warrant issued earlier than March of 1949 in favor of a fund which was established after September 25, 1947, the effective date of the new law. However, the intention of the General Assembly to authorize the certificate to the Auditor and the payment by the Auditor in or immediately following March of 1948, is too clear to be disregarded. There seems to me to be no real difficulty in harmonizing the several provisions of this section. It is true that in calculating what might be paid in March of 1948, we are called upon to compare the conditions of the fund as of December 31, 1947, with a theoretical amount in that fund as of the same date. But that comparison must plainly result in showing that such fund will be entitled at least in the first year of the operation of the law, to the subsidy, because whatever amount has actually come into the fund by March, 1948, will certainly be less than the same amount, plus \$1,000 multiplied by the number of members in the system.

The "number of members" referred to in this section clearly refers to the number of members in the system at the time the calculation is made, and not to the number on December 31, 1947. In the case of a newly organized system such as you suggest, it is manifest that there could be no members in the system on December 31, 1947 if it had not been organized until a later time.

In the light of the foregoing and in specific answer to your question, it is my opinion that where a firemen's relief and pension fund is established in a municipal corporation pursuant to Section 4600, General Code, at any time after the effective date of H. B. 195 (September 25, 1947)

and the tax levy provided in Section 4605, General Code, has been duly levied, such pension fund may upon filing with the Auditor of State the certificate required by Section 4631-4, General Code, receive from the Auditor a warrant from the subsidy provided by said section.

Question No. 2:

“(a) Do the provisions of Sections 4612-1 and 4628-1 of the General Code operate to vest a right in the beneficiary of a pension fund under the rules adopted by the trustees of a firemen’s relief and pension fund, and in effect at the time such pension was granted prior to the effective date of H. B. 195?

“(b) If the answer to part (a) of this question is in the affirmative, how would the provisions of Sections 4612-4 and 4628, General Code, as set forth in paragraph 9, be affected in the case of a beneficiary receiving a pension granted previous to September 25, 1947, when such beneficiary is now employed in a full time elective or appointive position in the service of the state or any political subdivision thereof?

“(c) If such vested right is found to exist with reference to such beneficiary who was employed and receiving a pension prior to September 25, 1947, does such vested right also accrue to a beneficiary on pension prior to September 25, 1947 who accepts employment after that date?

In 1937, the General Assembly enacted Section 4612-1, General Code, as a part of the law relating to the firemen’s pension fund. This statute with slight subsequent amendments now reads as follows:

“The granting of relief or pension to any person or persons pursuant to the rules adopted by the trustees shall operate to vest a right in such person or persons to obtain and receive the amount fixed by the board of trustees. The right to obtain and receive the relief or pension herein granted may be enforced by an action in mandamus instituted in the court of common pleas in the county in which the person or persons granted such relief or pension reside.”

At the same time Section 4628-1 relating to the policemen’s pension fund was enacted, reading as follows:

“The granting of a pension to any person hereafter pursuant to the rules adopted by the trustees shall operate to vest a right in such person, so long as he shall remain the beneficiary of such pension fund, to receive such pension at the rate so fixed at the time of granting such pension.”

The effect of these "vested right" statutes was clearly to put it beyond the power of the pension board, after granting a pension in accordance with its then existing rules, thereafter to withdraw or reduce such pension. But I do not consider that the General Assembly thereby deprived itself of its power to legislate further in the matter and to modify, suspend or even terminate such pension. Certainly, having created a pension system which is regarded by the law as a matter of gratuity, nothing could prevent the legislature, if it saw fit, from modifying its provisions or repealing the whole law.

An examination of the authorities seems to make it clear that a vested right must in some way relate to property. In 44 Words and Phrases, page 210, we find numerous decisions sustaining the proposition that a vested right must be something more than a mere expectation based on the anticipation of the continuance of present laws; that it must be an established interest in property.

As stated by the Supreme Court of Connecticut, 171 Atl., 664:

"To constitute a 'vested right' in contradistinction to expectant or contingent right it is essential that the right to enjoyment, present or prospective, has become the property of a particular person, as a present interest."

The general principle is thus stated in Cooley's Constitutional Limitations (8th Ed.), page 749:

"A right cannot be considered as a vested right, unless it is something more than such a mere expectation as may be based upon an anticipated continuance of the present general laws; it must have become a title, legal or equitable, to the present or future enjoyment of property, or to the present or future enforcement of a demand, or a legal exemption from a demand made by another."

Among the many cases supporting this principle, I note the case of Hazard vs. Alexander (Dec. Sup. Ct.) 173 Atl., 517, where it was held:

"No one has a vested right in public law, but the legislature may repeal or amend all legislative acts not in the nature of contracts or private grants."

In House Bill No. 195, Sections 4612-4 and 4628, relating respectively to firemen and policemen, provide explicitly the rights to pension and disability benefits of all members of the respective funds, *both those there-*

tofore granted and those thereafter granted. The schedule of pensions and benefits set forth in these sections is followed by the following concluding paragraph, which is too clear in its language to admit of any doubt as to the legislative intent :

“No person shall be entitled to receive pension or disability payments pursuant to the provisions of this section while he is holding an elective or appointive full time salaried office or position in the service of the state or any political subdivision thereof.”

Generally speaking, a pension granted by public authorities is regarded as a gratuity rather than a vested or contractual right. It was so held by the Supreme Court in the case of *Mell vs. State, ex rel. Fritz*, 130 O. S., 308. The court in its opinion pointed out that this is the unquestioned general rule even in cases where the pension funds are maintained in part by compulsory contributions of the beneficiaries.

After the passage of the so-called vested right statutes above referred to, the Supreme Court in the case of *State ex rel. Lemperle vs. McIntosh*, 145 O. S., 111, referred to the *Mell* case, then quoted Section 4628-1 *supra*, and said :

“A pension granted after the statute took effect is vested *in so far as the power of the trustees is concerned.*”
(Emphasis added.)

The inference is plain that the court did not regard such statute as having any effect except on the trustees.

Accordingly, in answer to the first branch of the second question under consideration, it is my opinion that the provisions of Sections 4612-1 and 4628-1 of the General Code, operate to vest a right in the beneficiary of a pension fund under the rules adopted by the trustees only in so far as they limit the right of the trustees to reduce or withdraw such pension, and do not limit the right of the General Assembly to provide as it has done in Sections 4612-4 and 4628, General Code, that no person shall be entitled to receive pension or disability payments pursuant to the provisions of said section while he is holding an elective or appointive full time salaried office or position in the service of the state or any political subdivision thereof. The above answer I believe substantially disposes of the second and third branches of this question.

Question No. 3:

“When a city fireman was injured in July 1947, and has been receiving Workmen’s Compensation, but has not been dismissed from the fire department, can such fireman accept a lump sum settlement from the Industrial Commission of Ohio and be lawfully entitled to receive the disability benefits provided in Section 4612-4, General Code?”

The statutes relative to the organization of a firemen’s relief and pension fund contain no reference to the workmen’s compensation system. However, Section 1465-61, General Code, relating to workmen’s compensation, does contain certain provisions relative to the rights of firemen who are members of a firemen’s pension and relief fund. That section reads in part, as follows:

“The term ‘employee,’ ‘workman’ and ‘operative’ as used in this act shall be construed to mean:

1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, and executive officers of boards of education, under any appointment or contract of hire, express or implied, oral or written, except any elected official of the state, or of any county, city, township, or incorporated village, or members of boards of education. Provided that nothing in this act shall apply to police or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen’s or firemen’s pension funds which are now or hereafter may be established and maintained by municipal authority under existing laws, unless the amount of the pension funds provided by municipal taxation and paid to such police or firemen shall be less than they would have received had the municipality no such pension funds provided by law; in which event such police and firemen shall be entitled to receive the regular state compensation provided for police and firemen in municipalities where no policemen’s or firemen’s pension funds have been created under the law; less, however, the sum or sums received by the said policemen or firemen from said pension funds provided by municipal taxation, and the sum or sums so paid to said policemen or firemen from said pension funds shall be certified to the industrial commission of Ohio by the treasurer or other officer controlling such pension funds.”

The responsibility for determining how much the fireman in question is entitled to by way of workmen’s compensation, appears to rest on the Industrial Commission, and when it has made an award to a fireman,

either by way of a weekly allowance or in a lump sum, it will have taken into consideration the benefits to which the fireman may be entitled under the laws relating to the pension fund of which he is a member. It would follow that the fireman in question would be entitled to receive from the pension fund the disability benefits provided by the law relating thereto.

Accordingly, it is my opinion that when a member of the fire department of a city which has a firemen's relief and pension system, is disabled, he is entitled to receive the benefits provided by Section 4612-4, General Code, notwithstanding the fact that he may have received allowances either by way of weekly payments or a lump sum from the Industrial Commission under the law relating to workmen's compensation.

Question No. 4:

"Where a member of a police or firemen's pension fund has been granted disability benefits by the trustees of said fund, in the amount of \$85.00 per month prior to September 25, 1947, which amount was in accordance with the rules and regulations adopted and in effect on April 1, 1947, is the beneficiary in such cases lawfully entitled to any increased allowance for disability benefits made effective after the enactment of H. B. 195, as provided in paragraph 2 of Sections 4612-4, General Code, and 4628, General Code?"

Section 412-4, General Code, relates both to "pensions" and "disability benefits" which may be granted to members of that system. That portion of this section which refers to members of the fund who had been granted *disability benefits* prior to the effective date of House Bill No. 195, reads as follows:

"Members of the fund who, *prior to the effective date of this act*, were granted disability benefits by the trustees of a firemen's relief and pension fund shall be entitled to receive such benefits in accordance with the rules and regulations governing the granting of such benefits in force and effect on April 1, 1947."

(Emphasis added.)

This is the only section of the law, so far as I can discover, which bears on the question which you have submitted. Section 4628, General Code, contains an identical provision as to members of the police pension fund, who prior to the effective date of said act were granted disability benefits.

Your reference to paragraph 2 of Sections 4612-4 and 4628, General Code, suggests that you may be under the impression that that paragraph

applies to a member who had been granted a disability allowance under the act in question. A careful examination of that section will disclose that it is prospective only, in its scope. This is made clear by considering another sentence in the introductory paragraph of Section 4612-4, which has its counterpart in Section 4628, and which reads as follows:

“Members of the fund who, *on or after the effective date of this act*, are granted pensions or disability benefits by the trustees of a firemen’s relief and pension fund shall be entitled to receive pensions and benefits as provided for in paragraphs 1 through 4, both inclusive, of this section.” (Emphasis added.)

Accordingly, it is my opinion and you are advised that where a member of the police and firemen’s pension fund has, prior to the effective date of House Bill No. 195 of the 97th General Assembly, been granted benefits by the trustees of such fund in an amount which was in accordance with the rules and regulations theretofore adopted and in effect on April 1, 1947, then the beneficiary is entitled to receive such benefits, and no additional benefits, from and after the effective date of said House Bill No. 195.

Question No. 5:

“Where a village employs two or more part time police officers, does such village come within the purview of Section 4616, General Code?”

Section 4616 of the General Code, as amended by House Bill No. 195, reads in part, as follows:

“In each municipal corporation having a police department supported in whole or in part at public expense, and *employing two or more full time regular members*, there shall be established and maintained a police relief and pension fund.” (Emphasis added.)

I find no provisions of the statute either requiring or authorizing any municipal corporation to establish a police relief and pension fund unless it employs two or more full time regular members. This is in contrast to the long established legislative policy, to which reference may be made in this connection. Section 4612-6, General Code, which has been in effect since 1939, provides expressly that municipalities which have less than two regular full time firemen *may* establish a firemen’s relief and pension fund, and that part time or volunteer firemen may participate

in the benefits thereof. I find no reference in the law to part time or volunteer police officers.

Accordingly, it is my opinion and you are advised that a municipal corporation which does not have in its police department at least two full time regular members appointed as provided in Section 4615-13, General Code, after the effective date of House Bill No. 195 of the 97th General Assembly, does not come within the provisions of Section 4616, General Code, and is not required or authorized to establish and maintain a police relief and pension fund.

Question No. 6:

“(a) When a municipal corporation employs two or more full time police officers who were members of the Public Employes Retirement System prior to the enactment of House Bill 195, are such police officers eligible for membership in and entitled to participate in the benefits of a police relief and pension fund established pursuant to the provisions of Section 4616, General Code?”

“(b) In the case of a municipal corporation employing three regular police officers prior to the effective date of House Bill 195, who are members of the Public Employes Retirement System, and after September 25, 1947 having employed one additional full time police officer, is it mandatory that a police relief and pension fund be established at that time, or shall such action be deferred until such time as two full time police officers have been employed pursuant to Section 4616, General Code?”

The first branch of the above question was touched upon in my opinion No. 2327 rendered on October 23, 1947, wherein it was pointed out that full time police officers who were members of the Public Employes Retirement System prior to the enactment of House Bill No. 195, do not come within the definition of “members of the police department,” as defined in Section 4631-3, General Code, which it was held, contemplates only appointments made after the effective date of that act.

Accordingly, it is my opinion and you are advised that where a municipal corporation had employed two or more full time police officers who were members of the Public Employes Retirement System prior to the effective date of House Bill No. 195, and after such date establishes a police relief and pension fund pursuant to the provisions of Section 4616 General Code, such police officers are not eligible for membership or

entitled to participate in the benefits of such fund, but remain members of the Public Employes Retirement System.

The second branch of this question differs from the first only, in that after September 1, 1947, one additional full time police officer was added. In view of the above discussion, you are advised that such municipality is neither required nor authorized to establish such fund until it has at least two full time regular police officers appointed at the time and in the manner required by Section 4631-3, General Code.

Question No. 7:

“When a police officer has obtained an original exemption from membership in the Public Employes Retirement System, and was not a member of a local police relief and pension fund prior to the effective date of H. B. 195 (9/25/47) is such police officer eligible for membership in the police relief and pension fund to be established in accordance with the provisions of Section 4616, General Code?”

A police officer of a municipality appointed prior to the effective date of House Bill No. 195 of the 97th General Assembly, would normally become automatically, and continue to be a member of the Public Employes Retirement System. In the light of the opinion hereinabove expressed and referred to, he would not be eligible for membership in a police relief and pension fund established in accordance with the present provisions of Section 4616 of the General Code, subsequent to the effective date of said act. Your question, however, presupposes that this officer had obtained an original exemption from membership in the Public Employes Retirement System. The fact that he had obtained such exemption would not in any wise change his status, so far as a police relief and pension system established as aforesaid, is concerned. He would not be a member of the Public Employes Retirement System and would not be eligible to membership in the police relief and pension fund.

Question No. 8:

“A member of the police department, having resigned to accept private employment, withdrew his contributions to the police relief and pension fund. After six months time had elapsed this man was re-employed as a police officer, and now wishes to re-deposit the amount of contributions withdrawn, with interest from date of withdrawal. Is there any authority of law whereby the trustees may accept a re-deposit of such contributions, and if so, how shall the interest rate be determined?”

Under the provisions of Section 4625, General Code, as it stood prior to the enactment of House Bill No. 195, by the 97th General Assembly, provision was made for the withdrawal of contributions by a member of a police relief and pension fund upon his separation from the service. That section in so far as pertinent, read as follows:

“A policeman who is separated from the department for any reason other than death or retirement, upon demand, shall be entitled to and shall be paid the full amount of deductions made under this act. If a policeman dies leaving no dependents entitled to relief or award from the police relief and pension fund, the full amount of said deductions shall be returned to his legal representative. If his legal representative cannot be found the moneys so deducted shall be forfeited and credited to the fund.”

There was no provision in the statutes authorizing the return of such contributions in case the officer thereafter returned to the service.

Furthermore, in the revision accomplished by said House Bill No. 195, Section 4625, General Code, was stripped of any provision whatsoever, such as that above quoted, authorizing the withdrawal of contributions by an officer upon quitting the service, and there is certainly nothing in the law as it stands today, authorizing the trustees of a police relief and pension fund to accept a re-deposit of such contributions. In this connection, attention may again be called to the definition contained in Section 4631-3, whereby it is clearly indicated that “member of the police department,” shall include only those who receive an original appointment after the effective date of House Bill No. 195, and that such appointment must be from a duly established civil service eligible list, in the case of a city, or under Sections 4384 or 4384-1, General Code, in case of a village, unless on the effective date of the act such officer is already a member of the fund and is contributing two per cent of his annual salary.

Accordingly, in specific answer to your question it is my opinion and you are advised that there is no provision in the law relating to the police relief and pension fund, whereby a police officer who has resigned to accept private employment, and withdrawn his contributions to such fund, may thereafter re-deposit such contributions.

Respectfully,

HUGH S. JENKINS,
Attorney General.