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1. POLICE OFFICER, MUNICIPAL—RETIREMENT FUND—ELECTED TO RECEIVE BENEFITS UNDER RULES AND REGULATIONS OF TRUSTEES IN FORCE AND EFFECT APRIL 1, 1947 AND RETIRED IN FEBRUARY, 1948—SECTION 4631-1 G. C.—RETIREMENT DOES NOT COME UNDER PROVISIONS OF SECTION 4628 G. C. WHICH PROHIBITS FULL TIME SALARIED EMPLOYEES IN SERVICE OF STATE OR ANY POLITICAL SUBDIVISION FROM RECEIVING PENSION OR DISABILITY PAYMENTS.
2. ALL PENSIONS GRANTED AFTER SEPTEMBER 25, 1947, SUBJECT TO PROHIBITION CONTAINED IN SECTION 4628 G. C.—PENSIONER HOLDING PUBLIC OFFICE OR EMPLOYMENT—EXCEPTION, POLICE OFFICERS WHO MADE ELECTION UNDER SECTION 4631-1 G. C.
3. POLICE OFFICER — RETIRED IN FEBRUARY, 1948 — RULES IN EFFECT APRIL 1, 1947—RIGHT TO RECEIVE PENSION WHEN THEREAFTER EMPLOYED BY STATE, DEPENDENT UPON RULES AND REGULATIONS OF BOARD OF TRUSTEES OF SYSTEM GRANTING PENSION —IN EFFECT APRIL 1, 1947.

SYLLABUS:

1. When a municipal police officer has exercised the election provided in Section 4631-1 of the General Code, to receive benefits under the rules and regulations of the trustees in force and effect on the first day of April, 1947, and such officer thereafter retires from the Police Department in February, 1948, such retirement does not come within the provisions of Section 4628, General Code, prohibiting full time salaried employes in the service of the state or any political subdivision thereof from receiving pension or disability payments.

2. The prohibition contained in Section 4628, General Code, against the payment of pensions while the pensioner is holding public office or employment extends to all pensions granted after September 25, 1947, except those granted police officers who made the election provided by Section 4631-1 of the General Code.

3. In the case of a police officer who retired in February, 1948, after having exercised an election to receive benefits under the rules in effect April 1, 1947, as provided by Section 4631-1, General Code, his right to receive a pension during the time he is thereafter employed by the State of Ohio will depend upon the provisions of the Rules and Regulations of the Board of Trustees of the system granting the pension which were in force and effect on the first day of April, 1947.

Columbus, Ohio, July 19, 1949

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

This will acknowledge receipt of your request for my opinion, which reads as follows :

"We are enclosing herewith a copy of a letter received from our City of Columbus examiner, citing a case in which a retired police officer has continued to draw a retirement pension from the city while at the same time employed by the State of Ohio.

"A somewhat similar question was considered in Attorney General's Opinion No. 2641, rendered January 23, 1948, and said opinion was later modified with respect to the question of 'vested rights' in pensions by the State Supreme Court, in the case of State, ex rel. Cunat v. Trustees of Cleveland Pension Fund, 149 O. S. 477 and 150 O. S. 377.

"However, the question raised in the Columbus case appears to differ in one respect from the others considered, therefore, we request that you examine the enclosures and give us your opinion in answer to the following questions :

"1. When a municipal police officer has exercised the option provided in Section 4631-1, General Code, to receive benefits under the rules in force and effect on the first day of April, 1947, and such officer retires from the Police Department in February, 1948, does such retirement come within the meaning and under the control of the prohibition contained in Section 4628, General Code, and reading in part as follows :

' * * * 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?'

"2. Is the prohibition contained in Section 4628, General Code, against the payment of pensions while the pensioner is holding public office or employment, limited to pensions granted under and in accordance with the rules established in that section of the General Code, or does it extend to all pensions granted *after the effective date of said statute, September 25, 1947?*

“3. In the case of a police officer retired in February, 1948, after having exercised an election to receive benefits under the rules in effect April 1, 1947, as provided in Section 4631-1, General Code, and now employed by the State of Ohio, is such retired police officer lawfully entitled to receive the pension provided under the rules, during the time he is employed by the State?”

It is clear from a reading of the case of the State, *ex rel. Cunat, et al. v. Trustees of Cleveland Police Relief and Pension Fund, et al.*, 149 O. S. 477, and the supplemental decision in 150 O. S. 377, that a police officer who retired after May 26, 1937 and before September 9, 1947 may receive payment on a pension even though he re-enter the state public service and hold a full time job therein.

It is equally clear from the above case that a police officer who retired before May 26, 1937 may not receive a payment on a pension if he holds a full time job in the public service of the state.

The policeman involved in this request retired in February, 1948, such date being after the effective date of the amended Police Relief Act. Stopping at this point there would be no doubt that the officer involved could not be employed in the public service of the state and still receive pension payments. Here, however, the officer in question has made an election under Section 4631-1 of the General Code. Such section is as follows:

“Persons who, on the effective date of this act, have been contributing two per cent of their annual salary to a police relief and pension fund may elect to receive benefits and pensions from said fund in accordance with the rules and regulations governing the granting of pensions and benefits therefrom, in force on the first day of April, 1947. Such election must be in writing and filed with the trustees of said fund within sixty days after the effective date of this act. Provided, however, such person shall be required to contribute to the fund in the manner and in the amount provided for in section 4625 of the General Code.”

It is to be noted that the statute says “rules and regulations governing the granting of pensions.” What is meant by “rules and regulations?” Does it mean that he may elect to be governed by the statutes in existence on the first day of April, 1947, or does it mean the rules and regulations of the trustees of the fund under Section 4628, General Code, as they existed on the first day of April, 1947? By reference to said section as it existed prior to the 1947 amendment thereof it is noted that it made no specific

provisions for the distribution of the fund but required the trustees to make all rules and regulations for such distribution, including the qualifications of those to whom any portion of the fund should be paid. Consequently, I am of the opinion that the wording in the present Section 4631-1 means exactly what it says, and that in electing to receive the benefits of the pension fund in accordance with the rules and regulations of the trustees in force on April 1, 1947, he is not electing to receive any statutory benefits, but rather those conferred by the board of trustees.

To determine whether or not a police officer who retired after September 9, 1947, having previously exercised his election to receive benefits under the rules in effect April 1, 1947, may hold a full time job in the state public service and also receive his pension payments, one must refer to the Rules and Regulations of the Board of Trustees of the pension system of which he was a member, which were in effect on that date. Using the Rules and Regulations of the Board of Trustees of the Police Relief Fund for the City of Columbus as an example, and I am sure similar provisions are found in the rules and regulations of other cities' relief funds, I find that Rule 15, Section 3, reads in part as follows:

“Provided further, that any person receiving a pension under the provision of Sec. 1, 2 or 3 of Rule 15, shall thereafter be removed from the roll of pensioners, if he accepts employment as a peace officer, sheriff, deputy sheriff, for hire in this or any other state, county or municipality, nor for any individual, firm or corporation, nor in his own behalf as principal or agent of any private detective agency or association, except by consent of a majority of the members of the Board of Trustees, and upon such conditions as the Board may prescribe.”

Thus, it will be seen that under these rules and regulations a retired member of the system could hold a full time job in the public service of the state with the consent of a majority of members of the board.

Indicative of the legislative intent that the election provided for in Section 4631-1, supra, is exclusive of the other provisions of the amendatory act is the fact that the Legislature deemed it necessary to add a proviso to said section that a person making such election should contribute to the pension fund in the manner and amount provided for in Section 4625, notwithstanding the provisions of the rules and regulations of any such pension system. It will be noted further that the present Section 4628,

in denying the right to full time employes of the state or political subdivisions to receive pensions, uses the following words:

“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.”

(Emphasis added.)

Since a police officer who has elected to receive the benefits under the rules in effect on the first day of April, 1947, would not be receiving benefits “pursuant to the provisions of this section,” the prohibition contained in said section would not be applicable to him.

It appears reasonably clear from the foregoing, that the purpose of Section 4631-1 was to extend to those police officers who were members of a police pension system on the effective date of the present amendatory police pension act and had been contributing at least two per cent of their salary to a police relief and pension fund, the privilege of electing, during a sixty day period, to thereafter receive their benefits under the rules and regulations of the system in force on April 1, 1947, or to be bound by the provisions of the amendatory act with respect to any and all benefits thereafter accruing.

Therefore, in specific answer to your questions, I am of the opinion that:

1. When a municipal police officer has exercised the election provided in Section 4631-1 of the General Code, to receive benefits under the rules and regulations of the trustees in force and effect on the first day of April, 1947, and such officer thereafter retires from the Police Department in February, 1948, such retirement does not come within the provisions of Section 4628, General Code, prohibiting full time salaried employes in the service of the state or any political subdivision thereof from receiving pension or disability payments.

2. The prohibition contained in Section 4628, General Code, against the payment of pensions while the pensioner is holding public office or employment extends to all pensions granted after September 25, 1947, except those granted police officers who made the election provided by Section 4631-1 of the General Code.

3. In the case of a police officer who retired in February, 1948, after having exercised an election to receive benefits under the rules in effect

April 1, 1947, as provided by Section 4631-1, General Code, his right to receive a pension during the time he is thereafter employed by the State of Ohio will depend upon the provisions of the Rules and Regulations of the Board of Trustees of the system granting the pension which were in force and effect on the first day of April, 1947.

Respectfully,

HERBERT S. DUFFY,
Attorney General.