

1244.

APPROVAL, NOTES OF WAYNE RURAL SCHOOL DISTRICT, ADAMS COUNTY, OHIO—\$6,185.00.

COLUMBUS, OHIO, July 31, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1245.

APPROVAL, NOTES OF UNION TOWNSHIP RURAL SCHOOL DISTRICT, BELMONT COUNTY, OHIO—\$2,196.00.

COLUMBUS, OHIO, July 31, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1246.

STATE TEACHERS RETIREMENT SYSTEM—DUTIES OF RETIREMENT BOARD PRESCRIBED BY STATUTE—UNAUTHORIZED TO EXTEND RETIREMENT ALLOWANCES CONTRARY TO STATUTE—MAY RETIRE MEMBERS ONLY AFTER APPLICATION THEREFOR.

SYLLABUS:

1. *The duties and powers of the State Teachers Retirement Board in the administration of the State Teachers Retirement System, are prescribed by law and limited by the statutory provision with reference thereto. It possesses no power except such as is expressly given or such as is necessarily implied to carry out the expressed powers granted.*

2. *The State Teachers Retirement Board is without power to extend the retirement allowances or other benefits to members of the State Teachers Retirement System, in any manner other than that authorized by statute.*

3. *The State Teachers Retirement Board may retire members of the Retirement System for disability, only after an application has been made therefor. It is without power to antedate the retirement so as to make retirement allowances and other benefits accrue at some time prior to the date of the report of the medical examination of the member, conducted in pursuance of an application for retirement showing that the member is physically or mentally incapable of performing his duties and ought to be retired.*

COLUMBUS, OHIO, July 31, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

DEAR SIRs:—This will acknowledge receipt by me of the following communication submitted over the signature of your secretary:

"I should like your formal opinion on the following:

Section 7896-37-GC provides for disability retirement, and provides

also that after the Retirement Board receives a report of the medical examination and finds that the teacher ought to be retired, the Board shall retire the said member for disability forthwith.

Does the language of this statute expressly provide that retirement can be effective only after the medical examination? Or might the Retirement Board exercise its discretion as to the time such retirement should begin, if prior to the medical examination?"

Accompanying this request is a memorandum setting forth the facts which prompted the inquiry. This memorandum reads as follows:

"....., a teacher in Akron, was reported ill in January 1928 by, another Akron teacher. We wrote to on February 6, 1928 explaining disability retirement. was expecting to teach again, and did not make application for disability retirement, and then came to be in such a condition mentally as to be unable to attend to his own business. We did not hear from him again until 1929, and he was retired May 1, 1929, and was granted \$35.18 monthly.

Recently a firm of attorneys in Cleveland has set up the claim that he should be paid a disability pension from the time he became ill until the time that his pension was granted."

The State Teachers Retirement System is designed to provide certain allowances and other benefits for teachers in the public schools of Ohio who are members of the System and for other persons who become members as provided by law, upon their retirement, either on account of disability or upon attaining a prescribed age after years of service, and for their heirs, executors and administrators or designated beneficiaries upon their death while in service.

The law creating the State Teachers Retirement System was enacted in 1919. (Sections 7896-1 et seq., General Code.) It provides for the creation and maintenance of a fund from which retirement allowances and other benefits, as well as costs of administration, shall be paid. By its terms it creates a board known as the State Teachers Retirement Board, to administer the System and provides somewhat in detail the mode and manner of administration of the System. The manner of becoming a member of the System, the contribution to the Retirement Fund to be made by each member, how and when members are retired and the extent of allowances and other benefits upon retirement are all provided for in the Act creating the System and subsequent amendments thereto.

For the administration of the Retirement System there is created a Retirement Board consisting of five members, the Superintendent of Public Instruction, the Auditor of State, the Attorney General and two teacher members who are elected by the members of the Retirement System. The duties and powers of this Board are fixed by Section 7896-3, General Code, as follows:

"The general administration and the management of the state teachers' retirement system and the making effective the provisions of this act (G. C. Sections 7896-1 to 7896-63) are hereby vested in the retirement board which shall have authority to make all necessary rules and regulations, not inconsistent with the provisions of this act, to carry into effect the provisions thereof."

It is a well established principle of law, evidenced by many cases in this state, that administrative boards created by statute, such as the State Teachers Retirement Board, are strictly limited in their powers to the powers granted to them. They possess no power not expressly delegated to them or necessary to carry out the express powers granted. *Peter vs. Parkinson*, 83 O. S. 36; *State ex rel. Locher vs. Menning*, 95 O. S. 97; *State ex rel. Bentley and Sons vs. Pierce*, 96 O. S. 44; *State ex rel. Clark vs. Cook*, 103 O. S. 465; *Schwing vs. McClure*, 120 O. S. 335. When the law expressly provides for the manner of administering the State Teachers Retirement System, the Retirement Board has no powers whatever with respect to the particular manner of so administering it other than to carry out the express mandate of the Legislature. It possesses no power to retire a member and make allowances from the Retirement Fund on account of such retirement unless the law expressly directs the same.

To retire a member for disability it is necessary that the procedure prescribed by law be followed. The circumstances under which a member may be retired for disability and the manner of effecting that retirement are set forth in Section 7896-37, General Code, which reads as follows:

“Medical examination of a member for disability shall be made upon the application of the employer or upon the application of the member or of a person acting in his behalf stating that said member is physically or mentally incapacitated for the performance of duty and ought to be retired, provided that the said member was a teacher as defined in this act (G. C. Sections 7896-1 to 7896-63) for not less than ten years preceding his retirement and was a member in each of such ten years which were subsequent to the year nineteen hundred and twenty. If such medical examination, conducted by a competent disinterested physician or physicians, selected by the retirement board shows that the said member is physically or mentally incapacitated for the performance of duty and ought to be retired, the examining physician, or physicians, shall so report and the retirement board shall retire the said member for disability forthwith.”

The language of the above statute is clear to the effect that the Retirement Board shall retire a member of the Retirement System for disability when, after a proper application has been made therefor, and a medical examination is conducted as prescribed by the statute, the Board determines that the said member is physically or mentally incapacitated for the performance of his duty and ought to be retired. Under the plain terms of the statute, the Board is not authorized to make this determination or to have a medical examination conducted until after a proper application for retirement has been filed with the Board. There is no provision of this statute or of any other, authorizing or permitting the Board to antedate an application for retirement or its determination that a member was physically or mentally incapacitated from performing his duty or for finding that a member ought to have been retired at some previous date. The statute expressly provides that the determination that the teacher is physically or mentally incapacitated for the performance of duty and ought to be retired is to be made after the application for retirement is filed and after the medical examination is held, and further provides that when this determination is made, the Board shall “forthwith” retire the member.

The language of the statute is clear and will not admit of any interpretation

or construction other than what its language plainly imports. Where there is anything doubtful in a statute it is the duty of a court, in expounding it, to give it such construction as will comport with what is supposed to have been the intention of the enacting power. Where the intention is manifest, but that intention is in part defeated by the use of some particular word or phrase, the court will look to the intention rather than the words. In the statute quoted above, however, there is nothing doubtful; nothing ambiguous; no words made use of which operate to defeat the manifest intention of the Legislature. There is nothing left for construction. We must apply it according to its literal meaning. Courts are unanimous in holding that where the language employed by the Legislature in a statute is clear and unambiguous, it is not the province of the court, under the guise of construction, to ignore the plain terms of the statute or to insert a provision not incorporated therein by the Legislature. *Maxfield vs. Brook*, 110 O. S. 566; *State ex rel. vs. Brown, Secretary of State*, 121 O. S. 329-331.

The Legislature having provided the time when members of the Retirement System may be retired for disability, to wit: upon the finding of the Retirement Board that a member is physically or mentally incapacitated for the performance of duty and ought to be retired after an application has been made to the Board for such retirement and a medical examination conducted, there is no power in the Board to retire the member at any other time or in any other manner.

I am therefore of the opinion, in specific answer to your question, that members of the State Teachers Retirement System may not be retired until after the medical examination, conducted by a competent disinterested physician or physicians selected by the Retirement Board, shows that the said member is physically or mentally incapacitated for the performance of duty and ought to be retired and there is no authority for the conducting of this examination until after an application for retirement has been made either by the employer, the member, or a person acting in his behalf. When the medical examination is made in pursuance of an application for retirement, and the report thereof shows affirmatively that the member should be retired, it is the duty of the Retirement Board to retire him forthwith. He may not be retired as of any other time.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1247.

BOARD OF EDUCATION—DUTY TO FIX SALARY OF TEACHERS—
ABROGATION OR CANCELLATION OF CONTRACT WITH TEACHERS PERMISSIBLE WHEN—HOW DEFICIENCY IN SALARY MET.

SYLLABUS:

1. *It is the duty of boards of education, upon the employment of teachers, to fix a definite salary for the teachers for the entire term for which they are employed, which salary, as so fixed, may be increased but not diminished during the term.*

2. *A contract made by a board of education with a teacher in the public schools of the district, may not be abrogated or cancelled before the expiration of the term for which the teacher is employed without the consent of the teacher to such cancellation, unless the teacher be dismissed for cause as provided by law or*