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1. RETIREMENT SYSTEM, PUBLIC EMPLOYES—MEMBER, SUPERANNUATE—RETIRED—MAY BE REEMPLOYED NOT LATER THAN SEPTEMBER 1, 1948.
2. PERSON SO REEMPLOYED—NEW MEMBER—ENTITLED TO ALL THE PRIVILEGES AND SUBJECT TO ALL THE OBLIGATIONS—STATUS AS TO RETIREMENT—LATEST TIME SERVICE MAY BE EXTENDED—JUNE 30, 1949.

SYLLABUS:

1. Under the provisions of Section 486-63b, General Code, one who has retired in the Public Employes Retirement System as a superannuate, may be re-employed not later than September 1, 1948.

2. Any person so re-employed, shall become a new member of the retirement system and be entitled to all the privileges and subject to all the obligations thereof. If he is seventy years of age at the time of such re-employment, he shall be retired by the retirement board on the June 30 following the date of his re-employment unless extended as provided by Section 486-59, General Code. Under the provisions of said Section 486-59, the latest time to which his service may be extended is June 30, 1949.

Columbus, Ohio, July 29, 1948

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:

“Section 486-63b, General Code, provides under certain conditions for the reemployment of a former public employe who has retired on a retirement allowance. A large number of former public employes have returned to the public service under the authority granted by this section.

“The question has been raised as to the date beyond which employment may not continue.

“Will you kindly indicate whether a person who was formerly granted a retirement allowance, then later under the authority of Section 486-63b returned to public service, may remain on a public payroll covered by the Retirement System after September 1, 1948. If such person may remain on the public payroll after that date, will you kindly indicate the con-

ditions and also specify whether any differentiation should be made between those persons under seventy years of age and those over seventy years of age.”

Section 486-63b, General Code, as amended by the 97th General Assembly, provides as follows:

“Until September 1, 1948, any employer, as defined by this act, may employ any person or persons receiving retirement allowances under the provisions of Sections 486-59, 486-60, and 486-61 of the General Code, such retired persons hereinafter to be referred to as superannuates, provided such employer shall formally declare that an emergency exists, and shall file with the retirement board a copy of such declaration, together with the name or names of the superannuates who are to be employed. In any case of employment of such superannuates without having filed the aforesaid declaration and notice of employment, such employer shall pay to the retirement board an amount equal to the portion of the retirement allowance paid to such superannuates subsequent to the date of employment from funds provided by the employer. The retirement allowances being paid to such superannuates shall cease within a maximum period of thirty days following such acceptance of re-employment. In case of the death of a superannuate during a period of re-employment, the retirement board shall pay to the estate or beneficiary of such deceased superannuate the total of all suspended annuity payments to which such superannuate was entitled from his accumulated contributions, with interest on such deferred amount at such rate as the retirement board shall determine.

“When a superannuate is re-employed as provided herein, he shall become a new member of the retirement system and shall have all rights and privileges and be charged with all obligations of such membership.

“If a superannuate thus re-employed again ceases to be an employe, the retirement board shall resume within thirty days of such separation the exact retirement allowance to which such person was formerly entitled. In addition thereto, the retirement board shall pay in one sum the total of all suspended annuity payments to which such superannuate was entitled from his accumulated contributions, with interest on such deferred amount at such rate as the retirement board shall determine.

“The retirement board shall have authority to make rules and regulations not inconsistent with the provisions of this section, to carry into effect the provisions thereof and to prevent abuse of the rights granted.”

The section, prior to its amendment, was in precisely the same wording, excepting that as amended in 1945 the date named in the first sentence was July 1, 1947, instead of September 1, 1948. The section had been enacted originally by the 95th General Assembly with July 1, 1945, as the dead-line.

It is to be noted that until September 1, 1948, any employer "may employ" a person who has been retired, and is therefore known as a superannuate. The one question that appears to me to arise in answering your question, is to determine what is meant by the word "employ". The word has two rather distinct meanings, the one being the *condition* of having or keeping a person in one's employ, and the other being the *act* of hiring. The definitions given in Webster's New International Dictionary appear to place more weight upon the first than upon the second of these meanings. The word is there defined: "To make use of the services of; to have or keep at work; to give employment to; to entrust with some duty or behest." By way of synonym, "employ; hire."

If we adopt the synonym "hire", then the section would clearly authorize an employer as defined in the retirement law, to *hire* a superannuate at any time until September 1, 1948. If on the contrary, we follow the other definition, then it would seem clear that a superannuate may be given employment and may continue in such employment until September 1, 1948, *and no longer*.

I find some evidence in the act of the General Assembly wherein this section was amended and reenacted, to support each of the foregoing alternatives. Senate Bill No. 7 of the 97th General Assembly, which was passed as an emergency measure on May 29 and became effective June 5, 1947, dealt only with Sections 486-59, 486-63b and 7896-101a of the General Code. Section 486-59 relates to members of the system who have not yet retired, and provides the conditions under which they may and must retire. Dealing with those who have reached the age of seventy years, it is "provided, that until September 1, 1948, any member having reached the age of seventy years may, upon written application approved by the head of his department or institution, be continued in service for a period of one year, or a part thereof, such applications to expire on the June 30 following the date upon which they were filed." This section further provides that on or after September 1, 1948, no such application for continuation in service shall be approved.

Section 486-63b, which I have already quoted, clearly relates to a different situation, to wit, the conditions under which a member who has already retired, may be reemployed.

Section 7896-101a likewise relates to the reemployment of superannuated members of the school employes retirement system and follows very closely the provisions of Section 486-63b, except that instead of opening the sentence with the words, "until September 1, 1948" this section provides in part, as follows:

"Any provisions of law to the contrary notwithstanding, a board of education may employ any person receiving a retirement benefit under the provisions of Sections 7896-100 or 7896-101 of the General Code, such retired person hereinafter to be referred to as superannuate, provided such employment does not extend beyond September 1, 1948, * * *"

These two sections, 486-63b and 7896-101a, had their origin in the same act, 120 O. L., 40. As already pointed out, they were both amended to their present reading in the same act, 122 O. L., S. 7.

When it is borne in mind that the school employes retirement system embraces all employes of boards of education except teachers and that the public employes retirement system covers substantially all other employes of the state and its subdivisions, and that the conditions for membership and of age for retirement in the two systems are substantially identical, and the benefits growing out of retirement, whether because of age or disability are substantially the same, it would appear that the General Assembly in dealing, in the same act, with the question of reemployment of superannuates in the two systems would have made the same provisions as to both.

However, if the General Assembly did intend to make identical provisions in regard to these two systems, it is hard to explain why they should not have used identical language in the two sections relative to the time limit for the reemployment of superannuates. It would have been very easy to say in Section 486-63b as was said in 7896-101a, "provided such employment does not extend beyond September 1, 1948."

It is idle for us to speculate on the reasons which may have moved the General Assembly to enact these sections in the way it did, and to introduce the differences which we have pointed out. That body may have

considered the employment situation in the field of school employes as being less acute than in the case of state, municipal and county employes.

We have a right in resolving an ambiguity in a statute to consider the surrounding circumstances and to ascertain if possible and give effect to the intent of the legislature which enacted it. This principle was laid down by the leading case of *Slingluff v. Weaver*, 66 O. S., 621. The first syllabus of that case is as follows:

“The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-making body which enacted it. And where its provisions are ambiguous, and its meaning doubtful, the history of legislation on the subject, and the consequences of a literal interpretation of the language may be considered; punctuation may be changed or disregarded; words transposed, or those necessary to a clear understanding and, as shown by the context manifestly intended, inserted.”

It is manifest that the provision of Section 486-63b regarding the reemployment of superannuates, grew out of the well recognized difficulty in securing and holding public employes against the enticements of private industry and the competition of federal agencies. In this situation it was recognized that there are throughout the state hundreds of men who, for reasons of their own, have retired at the age of sixty and in some circumstances at the age of fifty-five, but who are capable of giving some years of efficient service, if needed. It is hard to conceive of any good reason why if these persons are reemployed they should be forced out at any particular date or until their employers consider that the emergency is past. Certainly, no harm is done to public service and no one's rights are trespassed upon if these persons thus reemployed are kept in service as long as they are needed, and are efficient.

Furthermore, we must remember that these superannuates are not presently employed and therefore the definition which contemplates *continuation* in service cannot appropriately be applied to them. Being out of service, the only way they can be brought into service is to be “hired” and if they are to be hired the statute in effect says they may be hired up until September 1, 1948.

Having been thus rehired, the provision of the latter part of Section 486-63b becomes significant:

“When a superannuate is re-employed as provided herein, he shall become a *new member of the retirement system and shall have all rights and privileges and be charged with all obligations of such membership.*” (Emphasis added.)

Among the rights and obligations to which he would become entitled and subject under this provision, would be that provision of Section 486-59, General Code, which relates to an employe who is over seventy years of age at the time he became a member, or one who thereafter reaches that age. The pertinent portion of that section reads as follows:

“On June 30 following the date upon which he becomes a member the retirement board shall retire any employe who was over seventy years of age at the time he became a member and shall retire all other members, except elective officers, on the June 30 following the date upon which the age of seventy is attained. Provided, that until September 1, 1948, any member having reached the age of seventy years may, upon written application approved by the head of his department or institution, be continued in service for a period of one year, or any part thereof, such applications to expire on the June 30 following the date upon which they were filed unless renewed on or before the expiration date.

“On and after September 1, 1948, no such applications for continuation in service shall be approved, and any member who accepts an allowance under Sections 486-59, 486-60 or 486-61 of the General Code, or who is compelled to retire at the age of seventy years and who withdraws his accumulated contributions in lieu of accepting a retirement allowance shall be ineligible for regular re-employment in any capacity which comes within the provisions of the public employes retirement act.”

In my opinion construing this section, as reported in 1947 Opinions of the Attorney General, page 608, it was held:

“Under the provisions of Section 486-59, General Code, as amended by Senate Bill No. 7 of the 97th General Assembly, the latest date on which a member of the public employes retirement system who is over seventy years of age, may make application for continuation in service, is the 31st day of August, 1948, and the latest time to which such service may be continued, is June 30, 1949.”

Accordingly, and in specific answer to your question it is my opinion:

1. Under the provisions of Section 486-63b, General Code, one who has retired in the Public Employes Retirement System as a superannuate, may be reemployed not later than September 1, 1948.

2. Any person so reemployed, shall become a new member of the retirement system and be entitled to all the privileges and subject to all the obligations thereof. If he is seventy years of age at the time of such reemployment, he shall be retired by the retirement board on the June 30 following the date of his reemployment unless extended as provided by Section 486-59, General Code. Under the provisions of said Section 486-59, the latest time to which his service may be extended is June 30, 1949.

Respectfully,

HUGH S. JENKINS,
Attorney General.