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1. RETIREMENT SYSTEM, PUBLIC EMPLOYEES—MEMBER—
ON OR BEFORE JUNE 30, 1938—RELINQUISHED MEMBERSHIP BY WITHDRAWAL OF ACCUMULATED CONTRIBUTIONS—TO BE ENTITLED TO ALL RIGHTS UPON SUPERANNUATION RETIREMENT, I. E., ANNUITY, PENSION AND PRIOR SERVICE, EMPLOYEE MAY WITHIN FIVE YEARS RETURN AND PAY TO EMPLOYEES SAVINGS FUND ACCUMULATED CONTRIBUTIONS AS THEY WERE AT TIME OF SEPARATION PLUS INTEREST FROM DATE OF WITHDRAWAL TO DATE OF RE-DEPOSIT.
2. EMPLOYEE, MEMBER OF SYSTEM AFTER JUNE 30, 1938—
WITHDRAWAL — RELINQUISHMENT OF MEMBERSHIP —
STATUS OF RIGHTS UPON RETURN TO SYSTEM—PRIOR
SERVICE—SECTIONS 486-57, 486-60 G. C.

SYLLABUS:

1. A public employe who became a member of the public employes retirement system on or before June 30, 1938, and has relinquished his membership in such system through the withdrawal of his accumulated contributions, may 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 re-deposit, and thereupon he may upon superannuation retirement be entitled to all of the rights by way of annuity, pension and prior service pension provided by Section 486-60 General Code.

2. A public employe who became a member of the public employes retirement system after June 30, 1938, and thereafter separates from his service and relinquishes his membership in such system through the withdrawal of his accumulated contributions, and returns within five years and restores to the employes savings fund his accumulated contributions in accordance with Section 486-57 General Code, shall have restored to him his rights to receive an annuity based upon his contributions as provided by paragraph (a) and his right to the pension as provided by paragraph (b) but shall not have the right to the additional pension based upon prior service as provided by paragraph (c) of Section 486-60, General Code.

Columbus, Ohio, September 11, 1944

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:

“We desire to request your opinion upon the following situation:

Section 486-57 of the General Code provides as follows:

‘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.’

Our request involves the following question: Does the restoration of ‘annuity rights forfeited,’ refer only to annuity as defined in section 486-32 paragraph 15, or does it also include credit for any prior service which may have been rendered by the member?”

A brief resume of the history and development of the retirement system will have some bearing on the solution of the question which you present. The system was established by the legislature in 1933, in an act found in 115 Ohio Laws, p. 614. It was codified as Sections 486-32 to 486-75, inclusive, General Code. As originally enacted, it related only to appointive employes of the state and provided only for an annuity to superannuated or disabled employes based solely upon their own contributions. The state was forbidden by the act to make any contribution to the funds of the system.

It was provided by Section 486-65 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 representative cannot then be found, his accumulated contributions shall be forfeited to the retirement system and credited

to the guarantee fund.”

That provision of the act remains unchanged to the present time. Section 486-57 to which your inquiry relates appeared in the original act in the following words:

“SECTION 26. Should a state employe separate from his service as state employe and return within five years, and restore to the state employes’ savings fund, his accumulated deductions as they were at the time of his separation, the annuity rights forfeited by him at that time shall be restored and his obligations as a member of the retirement system shall resume.”

In 1937 the whole retirement act underwent a somewhat elaborate revision, and Section 486-57 was amended and has since remained unchanged in the following language:

“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”.

In this same 1937 revision there was added a section supplementary to Section 486-65, to wit: Section 486-65a, which provided in substance that membership should cease upon refund of the accumulated contributions or upon retirement, and further provided that a member who separated from his service as a state employe for any other reason than death or retirement, might leave his contributions on deposit for a limited period and be considered on a leave of absence.

In this same revision provisions were introduced calling for a contribution by the state as employer and for a pension in addition to the annuity, based upon the employer’s contribution, and also for an “additional pension” based upon what was called prior service, to wit: service as a state employe rendered before January 1, 1935.

In this connection we should note the provisions of Section 486-60 both as it appeared in the original act and as it was changed by the 1937

revision. In the following quotation the words not emphasized comprise the precise wording of the original act, while the portion emphasized represents the additions made in the revision. (117 O. L. p. 66). As amended, the section reads:

“Upon superannuation retirement, a state employe shall be granted a retirement allowance consisting of:

(a) An annuity having a reserve equal to the amount of the employes accumulated contributions at that time, *and, provided such employe shall not hold any remunerative office or employment in any federal, state, county or local government.*

(b) *A pension of equivalent amount, and*

(c) *An additional pension, if such employe is an original member, equal to one and one-third per centum of his average prior-service salary multiplied by the number of years of service in his prior-service certificate”.*

Coming then to a more particular examination of the provisions of Section 486-57 General Code, as amended in this revision, we note that when a state employe has separated himself from his service as such, and has relinquished his membership in the retirement system by withdrawal of his accumulated contributions, he may return within five years, restore the accumulated contributions thus withdrawn together with interest, and thereupon “the annuity rights *forfeited*” shall be *restored* and his “obligations” as a member of the system shall resume. The question that underlies your inquiry is whether the restoration of his annuity rights carried with it a restoration of any other right. At the time this amendment was adopted, he had no other right, and therefore could not have forfeited any other right and there was nothing to be *restored* except the annuity right. The legislature, in wording this section evidently had in mind the restoration of such rights as he had lost. But in the enactment of this revision it simultaneously created new rights, and no reference was made to a loss of such rights or their restoration.

Furthermore, the language of this section is *affirmative* in providing for a *restoration* of certain rights and does not contain any language of exclusion denying to him the enjoyment of any other right which by the terms of the act he might obtain. The legislature might well have been more specific in declaring that he should be restored to all the privileges

of membership, but it seems to me that resumption of all of the "obligations" of membership, carried with it, by fair implication, a restoration to all of the privileges. Plainly the return to the system and the re-payment made him a *member* of the system with all that membership implies.

I am therefore of the opinion that the language of this section does not deny to a member of the system who comes back in after withdrawing, the right to resume and claim such other benefits as the provisions of the law gave him, including the right to a pension based upon the contributions which his employer would thereafter make and the additional pension based upon his prior service. It should be noted in this connection that the so-called prior service pension was not payable to anyone unless he was an "*original member*", that term being defined at that time by Section 32 of the act as one who had been a state employe prior to December 31, 1934, whether or not such employment had been continuous and who had become a member of the retirement system on or before that date.

I am strengthened in my conclusion that the legislature did not intend in the framing of Section 486-57 to exclude the returning employe from his right to the two additional pensions provided by Section 486-60, by reason of the fact that in the same act of revision Section 486-56 was amended so as to introduce an entirely new idea, reading as follows:

"Any state employe eligible for original membership but who claimed exemption as provided by this act may at any time prior to January 1, 1938, make application to the retirement board for the withdrawal of such exemption and for membership with all the privileges of an original member, and the retirement board may grant such withdrawal of exemption and install such applicant as an original member, *including the right to receive prior-service credit*. Such applicant may make payment of such contributions with regular interest accrued thereon as he would have contributed to the retirement system had he been a member continuously since January 1, 1935, such payments to be made in such manner as the retirement board may require."

(Emphasis added.)

Here the legislature dealing with an employe who had declined to become a member of the system, makes specific provision that upon the withdrawal of his exemption he should be entitled to *all of the privileges of an original member, including his prior service right*. I can not believe that the legislature intended to prefer one who had thus elected to stay out of the system entirely and came in late, to one who had been a con-

tributing member and had been separated from the state service and later re-employed, and who desired to resume his membership. If there were to be any preference shown, it would appear to me that the latter was better entitled thereto. It might be added that this privilege of withdrawing one's exemption from membership and becoming a member of the system was continued by succeeding acts of the legislature up to the 31st day of December, 1943.

There remains, however, for consideration a provision that has more recently come into the act, found in Section 486-47 General Code, which was originally enacted by the 94th General Assembly becoming effective August 1, 1941. This section provided in part as follows:

"Any other provisions of law notwithstanding, one year of contributing membership in the retirement system shall entitle a member to receive prior service credit for services prior to January 1, 1935, in any capacity which comes within the provisions of the public employes retirement act, provided that such member has not lost membership at any time by the withdrawal of his accumulated contributions upon separation."

(Emphasis added.)

On first thought it might seem that the proviso introduced at the close of the above quoted paragraph would bar any employe who had undertaken to come back into the system pursuant to Section 486-57 from receiving any prior service credit because he had at one time lost his membership by withdrawal of his accumulated contributions. We must remember, however, that prior to the enactment of this Section 486-57, the right to a prior service pension was strictly limited to an original member, which, as we have already shown, was defined as one who was an employe and member of the system prior to December 31, 1934. This definition of an original member was subsequently changed so that the test of original membership was changed from December 31, 1934 to June 30, 1938. Now the right of such original member to a prior service pension is not dependent in any way upon Section 486-47, nor does that section in my opinion in any wise affect or take away from such original member his right to a prior service pension. Section 486-47 is a new grant of the right of prior service pension to employes who were not otherwise entitled to it, to wit, those who were not original members or who did not enjoy the rights of original membership. From and after its effective date any new member coming into the system could, after contributing

to the system for one year, obtain the right upon retirement to this prior service pension. Accordingly, the sole effect of the proviso would be upon one who was not an original member but who had come into the system after June 30, 1938, and had thereafter quit the service and had withdrawn his accumulated contributions and thereby lost his membership; so that in the event he should again become a public employe within the scope of the system he could not obtain the right to a prior service pension. He would not, however, lose his right to the pension provided for by paragraph (b) of Section 486-60 General Code, for the reason that that grows out of the contributions made by his employer and is not in any way affected by the provisions of Section 486-47 General Code, above referred to.

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

1. A public employe who became a member of the public employes retirement system on or before June 30, 1938, and has relinquished his membership in such system through the withdrawal of his accumulated contributions, may 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 re-deposit, and thereupon he may upon superannuation retirement be entitled to all of the rights by way of annuity, pension and prior service pension provided by Section 486-60 General Code.

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Respectfully,

THOMAS J. HERBERT
Attorney General