

**OPINION NO. 87-044****Syllabus:**

Persons who receive an allowance, pension, or benefit under R.C. Chapters 145, 3307, or 3309 are entitled, upon receiving such allowance, pension, or benefit for twelve months, to increased payments pursuant to R.C. 145.323, R.C. 3307.403, or R.C. 3309.374 based upon the accumulation of changes in the Consumer Price Index that occurs after the date upon which such allowance, pension, or benefit is first paid to those persons. Thus, under these sections, a person who retires in August 1987 may become eligible for an increased payment in August 1988 based upon the amount of change in the Consumer Price Index that occurs between calendar years 1986 and 1987, as determined by the retirement systems boards in April 1988. The eligibility of such person for increased payments in years subsequent to 1988 shall be determined by the retirement systems boards based upon the accumulation of changes in the Consumer Price Index commencing in 1987.

**To: William S. McLaughlin, Executive Director, Public Employees Retirement System, Columbus, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, June 5, 1987**

You have requested my opinion regarding the proper interpretation of R.C. 145.323, R.C. 3307.403, and R.C. 3309.374, which govern cost of living adjustments in the amounts of allowances, pensions, or benefits paid annually to persons by the Public Employees Retirement System (PERS), the State Teachers Retirement System (STRS), and the School Employees Retirement System (SERS) respectively. R.C. 145.323 provides as follows:

All persons receiving an allowance, pension, or benefit under Chapter 145. of the Revised Code may become eligible to receive an additional allowance in accordance with this section.

Beginning April 1, 1971, and each year thereafter, the board of the public employees retirement system shall determine the average percentage change in the consumer price index prepared by the United States bureau of labor statistics (U.S. City Average for Urban Wage Earners and Clerical Workers: All Items 1967) for the twelve calendar month period prior to the first day of January over the next preceding twelve calendar month period, as reported by the bureau.

Any percentage above the percentage authorized for the first increased payment shall be accumulated and combined with the percentage of change in the succeeding years. Whenever the balance of this accumulation is equal to or in excess of three per cent, the increased allowance provided in this section shall be paid. When the balance of the accumulation is less than three per cent, no additional increase shall be paid.

(A) Upon a determination by the board in any year that the accumulation of changes in the consumer price

index is equal to or in excess of three per cent the board shall increase all allowances and benefits payable under this section by three per cent.

The first increase is payable to all persons becoming eligible after June 30, 1971 upon such persons receiving an allowance for twelve months. The increased amount is payable for the ensuing twelve-month period or until the next increase is granted under this section, whichever is later. Subsequent increases shall be determined from the date of the first increase paid to the former member in the case of an allowance being paid a beneficiary under an option, or from the date of the first increase to the survivor first receiving an allowance or benefit in the case of an allowance or benefit being paid to the subsequent survivors of the former member.

(B) The date of the first increase under this section becomes the anniversary date for any future increases.

The allowance or benefit used in the first calculation of an increase under this section shall remain as the base for future increases, unless a new base is established.

The board shall make all rules necessary to carry out this section.

Provisions substantially identical to the foregoing appear in R.C. 3307.403 and R.C. 3309.374 for persons who receive allowances, pensions, or benefits from STRS and SERS, pursuant to the terms of R.C. Chapters 3307 and 3309.<sup>1</sup>

Your letter describes the purpose of each of these three sections, and their general operation, as follows:

Sections 145.323, 3307.403 and 3309.374 of the Ohio Revised Code were initially enacted by the General Assembly by S.B. 448, effective July 14, 1970, to provide for the protection of retired individuals' benefit levels in a time of inflation. The legislation provided for automatic cost of living adjustments in benefits paid under the terms of Chapters 145, 3307 and 3309 of the Ohio Revised Code whenever the cost of living, as measured by the U.S. Department of Labor's Consumer Price Index, increased at least by the figure specified in the statutes. The first automatic adjustments began in 1971 and provided a 1.5% annual increase in benefits, payable after the third year on retirement. There have been several amendments to the statutes in the ensuing years, so that at present a 3% increase is payable after the first year on retirement whenever the cost of living increases by at least 3%.

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<sup>1</sup> The Public Employees Retirement Board, the State Teachers Retirement Board, and the School Employees Retirement Board have promulgated rules pertaining, in varying respects, to R.C. 145.323, R.C. 3307.403, and R.C. 3309.374. Such rules currently appear at 1 Ohio Admin. Code 145-19-06 and 145-19-07, 3 Ohio Admin. Code 3307-1-12, and 3307-1-13, and 3 Ohio Admin. Code 3309-1-26, 3309-1-31, and 3309-1-32 respectively. None of these rules, however, address the particular questions posed in your letter.

Increases in the cost of living as measured by the U.S. Department of Labor's Consumer Price Index have in every year since 1971 exceeded 3%, although in 1984 and 1985, the excess was dramatically smaller than in previous years. It appears quite possible that the Consumer Price Index change for 1986 will be less than 3%, which raises a question of statutory interpretation which had not previously been a factor in eligibility for cost of living increases.

Under the terms of §§ 145.323, 3307.403 and 3309.374 of the Ohio Revised Code the Public Employees Retirement Board, the State Teachers Retirement Board, and the School Employees Retirement Board are under an obligation annually by April 1st to determine the average percentage change in the Consumer Price Index for the year just ended on December 31 over the change for the year immediately preceding. Beginning April 1, 1971, any excess percentage above the percentage authorized for payment under the statute is to be accumulated and combined with the excess percentage of change in succeeding years. Whenever the balance of this accumulation equals or exceeds 3%, the increased benefit provided by these sections shall be paid even when the Consumer Price Index itself fails to attain the minimum (3%) level to trigger an increase for the year.

For the first time since the applicable statutes were enacted the increase in the Consumer Price Index will fall below the minimum level (3%), thus requiring utilization of a portion of the accumulated excess percentage to provide payment for the automatic cost of living adjustment. For the calendar year 1986 it is estimated that the Consumer Price Index increased by approximately 1.54%. This leaves a differential remaining 1.46% to be charged against the accumulated excess percentage in authorizing the automatic cost of living increase for benefit recipients for the year beginning July 1986.

You indicate in your letter, however, that a question has arisen regarding the eligibility of persons who, for example, retired in 1984, 1985, or 1986 to receive an automatic 3% cost of living adjustment in the amounts of allowances, pensions, or benefits they receive if, in fact, the Consumer Price Index reflects an increase in the cost of living for calendar year 1986 of less than 3%. You state that it has been suggested that the pertinent language of R.C. 145.323, R.C. 3307.403, and R.C. 3309.374 "would operate to entitle such persons to automatic 3% increases in 1986, notwithstanding that the cost of living during the preceding calendar year did not exceed 3%, because the total accumulated excess percentage since 1971" may arguably be used for determining the eligibility for increased payments of persons who retired in 1984, 1985, or 1986.

In contrast, you note that these statutes might also be interpreted as directing accumulation only from the first anniversary date of an individual's retirement. You suggest that such an interpretation may be based upon that language of the statutes providing that a person becomes eligible for an increased payment upon such person receiving an allowance, pension, or benefit for twelve months, R.C. 145.323(A); R.C. 3307.403(A); R.C. 3309.374(A), which is then the anniversary date for that person's future increases, R.C. 145.323(B); R.C. 3307.403(B); R.C. 3309.374(B). Accordingly, because an

individual first becomes eligible for an increased payment only in a year following a year where the increase in the Consumer Price Index exceeds 3% for the preceding calendar year, and because the statutes direct that any percentage above the percentage authorized for the first increased payment shall be accumulated and combined with the percentage of change in the succeeding years, accumulation of excess, for purposes of calculating increases in individual benefits, begins only with the anniversary date of each individual's retirement.

Thus, with respect to the foregoing situation, your specific questions are as follows:

1. Is the total accumulation of excess percentage directed by §§ 145.323, 3307.403 and 3309.374 of the Ohio Revised Code retroactively accumulated to 1971 for all benefit recipients even in the case of retirements or benefits first payable in subsequent years?
2. Is a retirant or benefit recipient who first receives a benefit under Chapters 145, 3307 or 3309 of the Ohio Revised Code in a year in which the change in the cost of living as measured by the Consumer Price Index is less than 3% entitled upon receiving a benefit for twelve months to increased payments pursuant to §§ 145.323, 3307.403 and 3309.374 of the Ohio Revised Code based upon accumulation of excess percentage occurring after the effective date of the benefit?

The primary and paramount rule in the interpretation or construction of a statutory provision is to ascertain, declare, and give effect to the intention of the legislature as may be conveyed, either expressly or impliedly, by the language of the statute itself. Henry v. Central National Bank, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968); Suez Co. v. Young, 118 Ohio App. 415, 195 N.E.2d 117 (Lucas County 1963). In this regard, the General Assembly, in enacting a particular statute, is presumed to have intended thereby a just and reasonable result. R.C. 1.47(C). Consonant therewith, it has been stated that ambiguous statutory provisions should be interpreted, if possible, in a manner that permits a logical and reasonable result. Gulf Oil Corporation v. Kosydar, 44 Ohio St. 2d 208, 339 N.E.2d 820 (1975)(syllabus, paragraph two); Canton v. Imperial Bowling Lanes, Inc., 16 Ohio St. 2d 47, 242 N.E.2d 566 (1968)(syllabus, paragraph four); State ex rel. Cooper v. Savord, 153 Ohio St. 367, 92 N.E.2d 390 (1950)(syllabus, paragraph one); In Re Appeal of Ohio Radio, Inc., 25 Ohio App. 2d 84, 88, 266 N.E.2d 575, 577 (Ottawa County 1970). Further, in ascertaining the likely intent of the legislature in enacting a statute, resort may be had to pertinent extrinsic circumstances of which the legislature may have been aware at the time of the law's passage, and the general historical setting in which the law was conceived and debated. R.C. 1.49(B), (C). See generally Caldwell v. State, 115 Ohio St. 458, 460, 154 N.E. 792, 793 (1926); Trustees of Elizabeth Township v. White, 48 Ohio St. 577, 584-85, 29 N.E. 47, 49 (1891); Kitchens v. Duffield, 83 Ohio App. 41, 51, 76 N.E.2d 101, 106 (Franklin County 1947), affirmed, 149 Ohio St. 500, 79 N.E.2d 906 (1948); Zmunt v. Lexa, 37 Ohio App. 479, 486, 175 N.E. 458, 460 (Cuyahoga County 1930), affirmed, 123 Ohio St. 510, 176 N.E. 82 (1931). Finally, although statutes, as a general matter, are not to be construed according to principles

of equity, see, e.g., State ex rel. Jackson v. Horstman, 19 Ohio Op. 2d 64, 179 N.E.2d 182 (C.P. Montgomery County 1961), where one construction of a statute would produce equitable results and another inequitable results, the former will generally be adopted if the language of the statute does not preclude such an interpretation. See, e.g., Ohio Mutual Insurance Co. v. Marietta Woolen Factory, 1 Ohio Dec. Reprint 577 (D.C. Washington County 1853); 1965 Op. Att'y Gen. No. 65-180 at 2-402.

Applying the foregoing principles in this instance, I conclude that persons who receive an allowance, pension, or benefit under R.C. Chapters 145, 3307, or 3309 are entitled, upon receiving such allowance, pension, or benefit for twelve months, to increased payments pursuant to R.C. 145.323, R.C. 3307.403, or R.C. 3309.374 based upon the accumulation of changes in the Consumer Price Index that occurs after the date upon which such allowance, pension, or benefit is first paid to those persons. My review of these three sections persuades me that such conclusion correctly reflects the intent of the General Assembly underlying their enactment, as disclosed by the historical circumstances pertaining thereto and the objectives sought to be achieved thereby.

Clearly, these sections were enacted to permit periodic increases in the amounts of allowances, pensions, or benefits paid to retirees under R.C. Chapters 145, 3307, or 3309 as a means of ensuring that the purchasing power of such allowances and benefits would, to some extent, keep pace with equivalent increases in the annual cost of living as reflected in the Consumer Price Index. According to the documentation accompanying your letter, for example, the annual Consumer Price Index increased by 5.95% in 1970, the year in which R.C. 145.323, R.C. 3307.403, and R.C. 3309.374 first became effective, and by 4.21%, 3.33%, 6.18%, 11.05%, and 9.13% respectively in each of the five years immediately thereafter. As is further evident from that documentation, this pattern of significant increases in the annual rate of inflation continued unabated through 1982, when the increase in the Consumer Price Index was 5.99%, and only in 1983 did there finally occur a sudden, precipitous decline in the annual rate of inflation. Thus, in order to ameliorate the adverse effects such continued inflation would otherwise have upon the fixed incomes of public employment retirees, the General Assembly enacted R.C. 145.323, R.C. 3307.403, and R.C. 3309.374, prescribing therein specific formulae whereby the allowances, pensions, or benefits paid to such retirees would be increased by certain percentages, in accordance with concomitant increases in the Consumer Price Index. Specifically, these sections currently provide that a 3% increase in allowances and benefits shall be paid automatically in any year to eligible recipients when the balance of accumulated changes in the Consumer Price Index in prior years is equal to or in excess of 3%. A recipient becomes eligible for an increase in the amount of his allowance, pension, or benefit upon his having received such allowance, pension, or benefit for twelve months. Further, no 3% increase shall be paid to recipients who are otherwise eligible therefor in any year in which the balance of accumulated changes in the Consumer Price Index is less than 3%.

Insofar as R.C. 145.323, R.C. 3307.403, and R.C. 3309.374 were intended to mitigate the adverse consequences of inflation that would occur after public employees had retired from public

employment and had commenced receiving the allowances, pensions, and benefits otherwise accorded them by law, it follows that eligibility for benefit increases thereunder should likewise be based upon increases in the cost of living that occur subsequent to an employee's retirement. Conversely, I discern no rational basis for determining the eligibility of recent retirees for current and future increases in benefits under R.C. 145.323, R.C. 3307.403, and R.C. 3309.374 with reference to increases in the cost of living that occurred prior to the time that they actually retired and began receiving retirement benefits. One may presume, for example, that, in the case of public employees who retired in 1984, 1985, and 1986, a regular cost of living adjustment was included as a component of the periodic salary increases granted to such employees during their active working years throughout the fourteen to sixteen year period immediately preceding their retirement, which reflected increases in the cost of living that occurred in those years. Compare, e.g., 1973 Ohio Laws, Part I, 83, 112 (Am. Sub. S.B. 31, eff. Aug. 1, 1973) with 1983-1984 Ohio Laws, Part I, 1152, 1156 (Am. Sub. S.B. 311, eff. March 14, 1984)(both bills amending R.C.124.15, formerly R.C. 143.10, for the purpose, inter alia, of increasing the dollar amounts listed in the salary and wage schedules that appear in that section and that are applicable to all employees working for the state or any of the several departments, commissions, bureaus, boards, or councils of the state). Those cost of living adjustments, having contributed to the progressively higher base salaries paid to those employees in those years, have, in turn, been reflected in the final average salaries of such employees which provide, in part, the basis upon which their initial allowances, pensions, or benefits are calculated. See R.C. 145.01(K)(1); R.C. 3307.01(J); R.C. 3309.01(K)(these sections defining the term, "final average salary," for purposes of computing the amount of allowances, pensions, or benefits to be paid to retiring members of PERS, STRS, and SERS respectively). Thus, the pensions of the recent public employment retirees in question have, in this sense, already been adjusted to compensate for past inflation. Accordingly, there appears to be no practical reason to further increase the allowances, pensions, and benefits of these recent retirees under R.C. 145.323, R.C. 3307.403, and R.C. 3309.374 on the basis of increases in the cost of living that occurred ten to fifteen years before they retired.

I find further support for my conclusion that the recent retirees in question are not, as a matter of law, entitled to retroactive accumulation for purposes of determining their eligibility for cost of living adjustments under R.C. 145.323, R.C. 3307.403, and R.C. 3309.374 in the language of each of those sections that provides that, "[a]ny percentage above the percentage authorized for the first increased payment shall be accumulated and combined with the percentage of change in the succeeding years (emphasis added)." The statutes further provide that such first increased payment is payable to all persons becoming eligible after June 30, 1971, upon such persons receiving an allowance, pension, or benefit for twelve months. In this regard, a statute should, if possible, be construed in such a manner that its different parts are in harmony, thereby resulting in a consistent and harmonious whole. State ex rel. McGraw v. Gorman, 17 Ohio St. 3d 147, 149, 478 N.E.2d 770, 772 (1985)(per curiam); Suez Co. v. Young; 1985 Op. Att'y Gen. No. 85-030 at 2-109; 1983 Op. Att'y Gen. No. 83-020 at 2-75. Further, "a construction of a statute

which destroys the consistency thereof is to be avoided." Suez Co. v. Young, 118 Ohio App. at 424, 195 N.E.2d at 123. Thus, insofar as an individual retiree becomes eligible to receive an increased payment under these three sections only after he has actually received his initial allowance, pension, or benefit for twelve months, I believe the foregoing quoted language must similarly be interpreted to require that the accumulation referred to shall commence only after the date upon which an individual retiree begins to receive his allowance, pension, or benefit.

Accordingly, based upon the foregoing it is my opinion, and you are advised that persons who receive an allowance, pension, or benefit under R.C. Chapters 145, 3307, or 3309 are entitled, upon receiving such allowance, pension, or benefit for twelve months, to increased payments pursuant to R.C. 145.323, R.C. 3307.403, or R.C. 3309.374 based upon the accumulation of changes in the Consumer Price Index that occurs after the date upon which such allowance, pension, or benefit is first paid to those persons. Thus, under these sections, a person who retires in August 1987 may become eligible for an increased payment in August 1988 based upon the amount of change in the Consumer Price Index that occurs between calendar years 1986 and 1987, as determined by the retirement systems boards in April 1988. The eligibility of such person for increased payments in years subsequent to 1988 shall be determined by the retirement systems boards based upon the accumulation of changes in the Consumer Price Index commencing in 1987.