

stitution of Ohio by adopting a new section to be known as section 13 of Article XII."

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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PUBLIC EMPLOYEES RETIREMENT ACT—GENERAL CODE OF OHIO—NO PROVISION IN EITHER THAT PERSONS PAST AGE OF SEVENTY YEARS ON FIRST DAY OF EMPLOYMENT, INELIGIBLE FOR EMPLOYMENT BY A STATE DEPARTMENT—COMPULSORY RETIREMENT.

*SYLLABUS:*

*Nothing in the Public Employes Retirement Act or any other provision of the General Code of Ohio makes ineligible for employment by a state department persons who are past the age of seventy years on the first day of their employment.*

COLUMBUS, OHIO, July 13, 1939.

HONORABLE WILSON E. HOGE, *Secretary, Public Employes' Retirement System, Columbus, Ohio.*

DEAR SIR: I have your letter requesting my opinion as to whether or not a person over seventy years of age is eligible to be employed by one of the departments of state.

You invite my attention to Section 486-59, General Code, which, as you point, "provides compulsory retirement at 70 years of age, with certain specific exceptions for certain periods," and you ask whether or not persons who are "past the age of 70 years on the first date of their employment" may be so employed.

An examination of the Public Employes Retirement Act, Sections 486-32 to 486-71, inclusive, General Code, disclose that there is nothing in any of said sections making ineligible for appointment by one of the state departments a person who has attained seventy years of age, and I know of no provision in the General Code containing any such limitation or prohibition.

Section 486-59, General Code, was amended by the 93rd General Assembly in Amended Senate Bill No. 54, effective June 30, 1939, the second paragraph of which reads as follows:

"At the end of the year in which he becomes a member the retirement board shall retire any state employe who was over seventy years of age at the time he became a member and shall

retire all other members at the end of the year in which the age of seventy is attained except state employes in the classified service holding positions on account of exceptional qualifications under the provisions of section 486-14 of the General Code. Provided, that until January 1, 1942, 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, and thereafter may be continued in service for periods of one year each, upon the filing of like application and approval."

By the provisions of this section, the Retirement Board is required to retire any state employe who was over seventy years of age at the time he became a member of the Public Employes Retirement System who does not come within the exceptions expressly provided by the Legislature. If a person over seventy years of age who is appointed by a state department comes within either of the exceptions in the above quoted section, obviously he would not be affected by the mandatory requirement that the Retirement Board shall retire a state employe who was over seventy years of age at the time he became a member of the Retirement System.

Moreover, Section 486-33, after providing that membership in the Retirement System shall be compulsory, contains the provision that "any new member over the age of fifty years may be exempted for membership by filing written application for exemption with the retirement board within three months after being regularly employed as a state employe."

The same section contains authority for other exemptions for compulsory membership not necessary here to be noticed. It is sufficient to say, that since there are certain cases in which a person over seventy years of age may continue in active employment, and since any new member over the age of fifty years may be exempted from membership as provided in Section 486-33c, it is manifest that the retirement act does not prohibit the employment by a state department of persons who are past the age of seventy years on the first day of their employment.

Specifically answering your question, it is my opinion that nothing in the Public Employes Retirement Act or any other provision of the General Code of Ohio makes ineligible for employment by a state department persons who are past the age of seventy years on the first day of their employment.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*