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RETIREMENT SYSTEM, SCHOOL EMPLOYEES — MEMBER EITHER CONTINUED IN SERVICE BEYOND AGE OF RETIREMENT OR WAS REEMPLOYED AFTER SUPERANNUATION—MAY CONTINUE IN SERVICE ONLY UNTIL SEPTEMBER 1, 1948—AUTHORITY TO GRANT RETIREMENT FORTHWITH—SECTIONS 7896-99, 7896-101a G. C.

SYLLABUS:

A member of the school employes retirement system who has either been continued in service beyond the age of retirement specified in Section 7896-99 of the General Code, or who has been re-employed after superannuation as provided in Section 7896-101a, General Code, may continue in such service only until September 1, 1948, and thereupon the retirement board would have authority to grant him the benefit of retirement forthwith.

Columbus, Ohio, September 10, 1948

Mr. Ward Ashman, Executive Secretary  
School Employes Retirement System of Ohio  
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion in which you ask for an interpretation of certain sections relating to the retirement of an employe after reaching the age of seventy years. Your question reads:

“Has the Retirement Board of the School Employes Retirement System the authority to retire, as of the end of August, 1948, those members who have continued in employment beyond age seventy under authority of that portion of Section 7896-101a of the General Code, which provides that ‘the retirement board shall have authority to make all necessary rules and regulations, not inconsistent with the provisions of this section, to carry into effect the provisions thereof and prevent abuse of the privileges thereunder?’ ”

Your inquiry seems to turn principally upon an interpretation of the latter portion of Section 7896-101a, General Code. Such portion of that section reads as follows:

“A board of education may continue in service a member of the school employes retirement system who has reached the compulsory retirement age under the provisions of Section 7896-99 of the General Code. Provided such employment does not extend beyond September 1, 1948, and provided further that the board of education employing such person has declared by a formal resolution, passed by a majority vote of the board, that an emergency exists, and has filed with the retirement board a copy of such resolution together with the name of the person who is to be continued in service.”

This section also deals with the power of a board of education to reemploy one who has retired as a superannuate in the system and is receiving a retirement allowance. In both of these cases, the law specifically provides that such continuation of service or such reemployment shall not extend beyond September 1, 1948, and both must be predicated upon a declaration by the board of education that an emergency exists. In the portion of Section 7896-101a which I have quoted, reference is made to

the provisions of Section 7896-99, General Code, which became effective June 30, 1943, relative to the age of compulsory retirement. As bearing on this, I quote a portion of that section as follows:

“Any employe, except a new entrant with less than five years of service, who has attained sixty years of age may retire, if a member, by filing with the retirement board an application for retirement.

“The filing of such application shall retire such member as of the end of the quarter of the calendar year then current. At the end of the year in which they become members the retirement board shall retire all employes who were over seventy years of age at the time they became members and shall retire all other members at the end of the year in which the age of seventy is attained.”

It will be noted here that the employe who was more than seventy years of age at the time he became a member, as well as one who thereafter reaches the age of seventy does not retire on his own application but the peremptory duty is placed on the board to retire him at the *end of the year* in which he became a member if he was over seventy at the time of his appointment, and to retire all others at the *end of the year* in which the age of seventy is attained. For the purpose of the law relating to this system, “year” is defined by Section 7896-64, General Code, as meaning the year beginning July 1, and ending June 30.

These provisions allowing the member to continue his service until the end of the year before being compulsorily retired, were evidently intended as a concession to the member, and designed to avoid a too speedy and peremptory retirement.

However, by the later enactment of Section 7896-101a, *supra*, the General Assembly appears to have determined to put a final limit on such extension of service and September 1, 1948, was fixed as a definite day beyond which an employe having reached the age of seventy years cannot under any circumstances remain in his position of employment.

Your letter suggests the possibility that in such a case there is no provision to be found in the law giving to the board the right to retire this employe, short of the end of the year, and that in the meantime he would thereby be deprived both of the right to draw a salary and also of his right to receive a retirement allowance, which as you suggest, would seem to be an unjust result.

I do not consider that the provisions of Section 7896-99 either relating to an employe who retires on his own application at the end of the calendar quarter then current, or as to the one who is forced to retire at the end of the year in which the age of seventy is attained, quite cover the case which we are considering. The employe under consideration, has been allowed to continue in service beyond the regular retirement age, by virtue of the provisions of the law, based upon an emergency, and for this extended employment a definite limitation, to wit, September 1, 1948, has been fixed. His retirement in such case is merely a postponed event and in my opinion the purpose and intent of the law could hardly be carried out with fairness and without a certain amount of hardship unless it be the right and the duty of the retirement board to retire him and permit him to enjoy his retirement allowance forthwith.

This brings into view the final paragraph of Section 7896-101a which you quote in your letter, and which I here set forth, reading as follows:

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

This provision appears to me to have been added to this particular section because of the obvious fact that its application might result either in abuse of the system or in hardship upon the member, and the board should therefore be given a wide discretion.

Accordingly, it is my opinion and you are advised that a member of the school employes retirement system who has either been continued in service beyond the age of retirement specified in Section 7896-99 of the General Code, or who has been reemployed after superannuation as provided in Section 7896-101a, General Code, may continue in such service only until September 1, 1948, and thereupon the retirement board would have authority to grant him the benefit of retirement forthwith.

Respectfully,

HUGH S. JENKINS,  
Attorney General