

3529

RETIREMENT SYSTEM, PUBLIC EMPLOYEES—RETIRED MEMBER ELECTED TO PART TIME SALARIED OFFICE—MUST FORFEIT RIGHT TO PENSION SPECIFIED IN PARAGRAPHS b, c, d, SECTION 486-60 G. C. SO LONG AS HE HOLDS SUCH OFFICE.

SYLLABUS:

A retired member of the public employes retirement system who has been elected to a part time salaried office must, so long as he holds such office, forfeit his right to the pension specified in paragraphs (b), (c) and (d), of Section 486-60, General Code.

Columbus, Ohio, August 5, 1948

Mr. Fred L. Schneider, Secretary, Public Employes Retirement System
Columbus, Ohio

Dear Sir:

I have before me your communication requesting my opinion, and reading as follows:

“The Retirement Board has determined that the elective office of one of the retired members is a part time salaried office. In Opinion No. 3294 you have held that the Board was within its jurisdiction in making such determinations.

“The question has now been raised whether this retired member is eligible only for the annuity provided in sub-paragraph (a) of Section 486-60, General Code, or whether he is entitled also to the other benefits provided in that section. Accordingly, the Board has authorized me to request your opinion in order that the amount of the retirement allowance due this retired member during the time that he holds the part-time elective office can be determined.”

Section 486-60, General Code, to which you refer, was originally enacted as a part of the law organizing the state employes retirement system, and read as follows:

“Upon superannuation retirement, a state employe shall be granted a retirement allowance consisting of an annuity having a reserve equal to the amount of the employe’s accumulated contributions at that time.”

As you will observe, the retirement allowance here consisted only of the annuity arising from the member's contributions. The reason for this was that as originally set up, there was no provision in the law for the "matching pension" or for a "prior service pension." In 1937, this section was amplified to read as follows:

"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 employe's 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."

It will be observed here that paragraph (a) provided for an annuity, with a reservation which might seem to deny the member that annuity, provided he held any remunerative office or employment. To give it that construction, one would have to give undue importance to the period which ended that paragraph. Plainly the intention of the General Assembly has at all times been to give the member the benefit of his annuity under such circumstances, while denying to him the full right to enjoy the "pension" portion of his retirement allowance. This section as it then read, was under consideration in the opinion of a former Attorney General, found in 1942 Opinions of the Attorney General, page 99, where without any discussion and without reference to the question of punctuation, that conclusion seems to have been assumed.

In a further revision in 1945, the section in question was amended to read as follows:

"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 employe's 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 two per centum of his final average salary multiplied by the number of years of service in his prior-service certificate.” (Emphasis added.)

Here, it will be noted that a comma was substituted for a period at the end of paragraph (a), and paragraphs (b) and (c) were run together, without any punctuation whatsoever, separating them.

The 97th General Assembly amended this section by an act which became effective June 5, 1947. In this amendment there was added a provision for a basic pension of \$180 per annum, to those who had ten or more years of service credit. The section as then amended and now in force, reads as follows:

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

“(a) An annuity having a reserve equal to the amount of the member’s accumulated contributions at that time,

“(b) *So long as* such member shall not hold any remunerative office or employment in any federal, state, county or local government, a pension of equivalent amount and

“(c) An additional pension, if such member can qualify for prior service, equal to two per centum of his final average salary multiplied by the number of years of such prior service credit, and

“(d) A basic annual pension equal to \$180, providing the member has ten or more years of total service credit, except that such additional basic annual pension shall not exceed the sum of the annual benefits provided by paragraphs (a), (b) and (c) of this section. The cost of such basic annual pension shall be included in the deficiency contribution provided by sections 486-68a and 486-68c, General Code.” (Emphasis added.)

It will be observed here that (b) and (c) are still connected without any intervening punctuation, whereas there is a comma at the end of (c), which might lead to a plausible argument that the General Assembly intended to give a retiring member in any event the annuity contained in (a), and to deprive him of the benefits of the pension covered by (b) and (c), but to allow him the basic annual pension covered by (d).

This section, from the time of its first amendment, has certainly been phrased in confusing language and its provisions have been put together

in a most awkward sequence. If the legislature intended to deprive a superannuate of a portion of his retirement allowance during the time he held a remunerative office or employment it could very easily have stated in unmistakable language which portion of that allowance he was to forego. We may, however, indulge the presumption, which appears to me to be entirely reasonable, that since all three of the benefits described in (b), (c) and (d) are pure gratuities to which the member has contributed nothing, it was the intention of the General Assembly to deprive him of those gratuities so long as he enjoyed the benefits of another remunerative public office or employment. In reaching this conclusion, we are disregarding technicalities that might be based on the presence or omission of a comma, and undertaking to arrive at the intention of the lawmaking body by considering the manifest purposes of the legislation.

This task is not made easier by the provisions of Section 486-59, General Code, which reads:

“In the event any retired pensioner, after such retirement, is elected to a *full-time salaried office* by the electors of the state or any political subdivision thereof at any election, such pensioner, by the acceptance of any such office *shall* forfeit his pension during the period such pensioner so holds such office and receives the salary therefor.” (Emphasis added.)

This provision, last quoted, prior to its amendment by the 97th General Assembly, instead of providing that such pensioner “shall forfeit” his pension during the period he holds such other office, read, “shall not forfeit his pension but the same shall be held in abeyance” during that period. As it now stands, it might appear that if the position to which he is elected is *not a full-time office*, he should receive his pension notwithstanding his election thereto. At least that would be a reasonable conclusion if it were not for the provisions of Section 486-60 which I have been discussing.

The above quoted provision was not added to Section 486-59, General Code, until 1941 (119 O. L. 151). That was some years after Section 486-60 was in force with its broad provision denying a retired member his right to pension while holding another public office. The purpose of putting this provision in Section 486-59 is by no means clear, and so far as I can discover, it had no effect. As to one who should be elected to a full time office, it only emphasized what was already in Section 486-60.

As to one who might be elected to a part time office, it contained no affirmative provision, and offered no exemption. Accordingly, it is impossible to construe it as an exception to Section 486-60.

It would appear, therefore, and you are advised that a retired member of the public employes retirement system who has been elected to a part time salaried office must, so long as he holds such office, forfeit his right to the pension specified in paragraphs (b), (c) and (d) of Section 486-60, General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.