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FIREMEN'S PENSION FUND — RULE, BOARD OF TRUSTEES, THAT WIDOW OF DECEASED FIREMAN, WHO RECEIVES DEATH BENEFITS FROM WORKMEN'S COMPENSATION FUND OF OHIO SHALL NOT BE ELIGIBLE TO RECEIVE PENSION FROM SUCH FUND, IS VALID RULE — NO APPLICATION FOR PENSION SHALL BE ENTERTAINED "UNTIL SUCH WIDOW SHALL HAVE BEEN DENIED DEATH BENEFITS BY INDUSTRIAL COMMISSION OF OHIO" — SECTION 4612-5 G.C. DOES NOT NULLIFY SECTION 4612-4 G.C.

SYLLABUS:

1. *Section 4612-5, General Code, does not render ineffective or nullify the provisions of Section 4612-4, General Code.*

2. *A rule and regulation of a board of trustees of a firemen's pension fund, duly adopted pursuant to the provisions of Section 4628, General Code, and Section 4612-4, General Code (former Section 4612, General Code), prior to the enactment of Section 4612-5, General Code, providing that the widow of a deceased fireman, receiving death benefits from the Workmen's Compensation Fund of Ohio, shall not be eligible to receive a pension from the firemen's pension fund, and that the board of trustees shall not entertain an application for a pension "until such widow shall have been denied death benefits by the Industrial Commission of Ohio," is a valid rule, unaffected by the provisions of Section 4612-5, General Code.*

Columbus, Ohio, April 25, 1941.

Honorable James E. Reed, Prosecuting Attorney,
Marion, Ohio.

Dear Sir:

Your letter of March 4th, requesting my opinion, received in due course. Your communication reads:

"On March 20, 1939, the following rule was adopted by

the Trustees of the Firemen's Relief and Pension Fund:

'Provided further, that in event any widow of a deceased member of the Fire Department is eligible to and does receive death benefits from the Workmen's Compensation Fund of the State of Ohio, such widow shall not be eligible to receive any pension under these rules for the period of time covered by said State Compensation payments.

This board shall not entertain applications for pensions until such widow shall have been denied death benefits by the Industrial Commission of Ohio.

Upon termination of payments of death benefits under the Workmen's Compensation Act of Ohio this board or its successors shall award such widow or other dependents such pensions to which they may then be entitled and in amounts as may be fixed by the Rules of the board at that time.'

At that time General Code Section 4612-4 was in effect.

On August 10, 1939, the Legislature made effective General Code Section 4612-5.

Question: Does General Code Section 4612-5 render ineffective General Code Section 4212-4? Does General Code Section 4612-5 render ineffective the rule as above set out?

Does General Code Section 4612-5 make it mandatory for the trustees to pay a relief or pension benefit regardless of this rule as adopted?"

I assume that when you refer to Section 4612-4, General Code, as having been in effect at the time of the adoption of the rule set out in your letter, you had in mind old Section 4612, General Code, as Sections 4612-4 and 4612-5 were enacted in the same act, effective on August 10, 1939 (118 v. 283), the new Section 4612-4 being substantially in the same language as old Section 4612.

Sections 4612-4 and 4612-5, General Code, respectively provide as follows:

Section 4612-4:

"The board of trustees established pursuant to section 4600 of the General Code shall adopt all rules and regulations providing for distribution of the fund including the qualifications of those to whom any portion of it shall be paid and the amount thereof."

Section 4612-5:

“The widows or orphans of a member who has contributed to the firemen’s relief and pension fund shall receive therefrom monthly or semi-monthly payments for such amount as shall be determined by the board of trustees.

The widows or orphans of a deceased member may enforce the payments of the amounts so designated so long as the deceased had not prior to his death received the amount of his contribution as provided for in section 4609 of the General Code.

The board of trustees may by regulation provide for the termination of payments upon the remarriage of widows of members, and may prescribe the age at which payments to orphans shall terminate, which age shall not be less than eighteen years.”

Section 4628, General Code (which was not amended by the 93rd General Assembly), is in pari materia with the two sections above quoted and the three sections must be read together and so interpreted and construed as to effect the legislative intent.

Section 4628 reads:

“Such trustees shall make all rules and regulations for distribution of the fund, including the qualifications of those to whom any portion of the fund shall be paid, and the amount thereof, with power also to give credit for prior continuous actual service in the fire department or in any other department of the city rendering service in fire prevention, but no rules or regulations shall be in force until approved by a majority of the board of trustees.”

It is now the law (and has long been the settled policy of this state as determined by the Legislative branch of our government) that the distribution of monies in the firemen’s pension fund shall be governed by rules and regulations duly adopted by the board of trustees of such fund. As stated in the second branch of the syllabus in the case of *State ex rel. Banning v. Kennedy, Treasurer*, 137 O.S. 586, 1941, under the provisions of Section 4612-4, General Code, “the board of trustees of the firemen’s pension fund is authorized to adopt rules for the distribution of the fund created and maintained for pensions and the payment thereof to those coming within the qualifications prescribed.”

See also *State, ex rel. Cline, v. Miller, et al., etc.*, 134 O.S., 445, 13 O.O. 38, 17 N.E. 749 (1938); *State, ex rel. Eden, v. Kundts, et al., etc.*,

127 O.S. 276, 188 N.E. 9 (1933); *Roth v. Trustees of Firemen's Pension Fund*, 62 O.S. 659 (1900); *Karb, et al. v. State, ex rel.*, 54 O.S. 383, 43 N.E. 920 (1896); *O'Neil v. Quillin, et al., Police Relief Trustees*, 63 O.A. 209, 16 O.O. 505, 25 N.E. (2nd) 952 (1939); *Rice, et al., Trustees, v. State, ex rel.*, 48 Bull. 12 (1902); *Opinions, Attorney General: 1941, No. 3394, February 6, 1941; 1939, Nos. 1526 and 1493, pages 2251 and 2201; 1935, No. 4108, page 348.*

In the case of *O'Neill v. Quillin et al.*, supra (63 O.A. 209), it was held as follows, as stated in the syllabus:

"A rule of the Trustees of the Police Relief Fund of the City of Toledo by which a widow of a deceased police officer who receives death benefits from Workmen's Compensation Fund of Ohio equal to or greater than the benefits provided for by the relief fund, is ineligible to receive such benefits from that fund as long as the state benefits are paid to her, is a valid rule and a widow so circumstanced cannot, by mandamus, compel the trustees of the relief fund to pay her benefits from it."

As will be seen in the opinion of Judge Carpenter, this case followed the case of *State, ex rel. v. Miller, et al., etc.*, supra (134 O.S. 445). At pages 212 and 213, Judge Carpenter said:

"While the validity of Rule 14, Section 2, is sustained by *State, ex rel. Cline v. Miller, et al., Trustees, supra*, it is appropriate to observe that the manifest purpose of the police relief fund is to secure to dependents of police officers killed in service a minimum monthly pension, and the rule which safeguards the taxpayers from a double burden in such cases is not unreasonable. Both the city police relief fund and the workmen's compensation fund administered by the Industrial Commission of Ohio, are supported by the taxpayers of the city—the former by a direct levy (Section 4621, General Code) and the latter by appropriations to pay the premiums assessed by the commission. * * *

When relator obtained the award from the state, which was more than the pension she received from respondents, under the rule she became ineligible longer to receive such pension, and this ineligibility has continued to this time, and the writ prayed for must be denied."

In connection with the above case, your attention is invited to that part of Section 1465-61, General Code, referred to by the Supreme Court

in the Cline case, *supra*, at page 448. The pertinent part of this section reads:

“ * * * Provided that nothing in this act shall apply to police or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen’s or firemen’s pension fund which are now or hereafter may be established and maintained by municipal authority under existing laws, unless the amount of the pension funds provided by municipal taxation and paid to such police or firemen shall be less than they would have received had the municipality no such pension funds provided by law; in which event such police or firemen shall be entitled to receive the regular state compensation provided for police and firemen in municipalities where no policemen’s or firemen’s pension funds have been created under the law; less, however, the sum or sums received by the said policemen or firemen from said pension funds provided by municipal taxation, and the sum or sums so paid to said policemen or firemen from said pension funds shall be certified to the industrial commission of Ohio by the treasurer or other officer controlling such pension funds. * * * ”

While both the Cline and the O’Neill cases, *supra*, had to do with policemen’s pension funds, there being no section relating thereto analogous to Section 4612-5, General Code, above quoted, and not with firemen’s pension funds, I see nothing in Section 4612-5, *supra*, which would vitiate the regulation about which you inquire, or prevent a board of trustees of a firemen’s pension fund from now adopting such a rule and regulation. You will observe that the first paragraph of Section 4612-5 empowers the board of trustees to determine the amount of the monthly or semi-monthly payments to be made to widows or orphans of deceased firemen, and in the last paragraph, by regulation to “provide for the termination of payments upon the remarriage of widows of members” and prescribe the age at which payments to orphans shall terminate, *which age shall not be less than eighteen years*. The only mandatory directions contained in this section are the one underscored in the sentence immediately preceding and in the second paragraph of the section under consideration permitting enforcement of payments by widows and orphans “so long as the deceased had not prior to his death received the amount of his contribution as provided for in Section 4609 of the General Code,” *viz.*, two per centum of his annual salary.

The provisions of Section 4612-5, *supra*, are so clear and un-

ambiguous as to require no construction, especially when read in connection with Sections 4612-4 and 4628, *supra*, as well as Section 4612-1, General Code, providing that the granting of relief or a pension "pursuant to the rules adopted by the trustees" shall create a vested right, and Section 4612-3, General Code, empowering the board of trustees to adopt rules for the allowance of certain credit to firemen who served in the armed forces of the United States, as provided in such section.

But were it necessary to resort to the rules of statutory interpretation and construction, two of the fundamental canons of construction would seem to be dispositive. First, it is presumed that in enacting a statute the law-making body acts with a full knowledge of the existing law and with reference to it. See 37 O. Jur. 331. Had the General Assembly intended an interpretation and construction of Section 4612-5, General Code, other than here given, it seems to me it would have amended or repealed Section 4628, *supra*, and it would probably not have re-enacted old Section 4612, General Code, as Section 4612-4, *supra*, in substantially the same form. Second, all statutes and statutory provisions must be so interpreted and construed if possible as to give full force and effect to each and all of them. (37 O. Jur. 617.) Not only does the interpretation and construction adopted preserve what appears to be the obvious and complete intendment of Sections 4612-4 and 4628, General Code, but is in keeping with the legislative scheme or policy, past and present, as above pointed out.

In view of the foregoing, and in specific answer to your questions, it is my opinion that:

1. Section 4612-5, General Code, does not render ineffective or nullify the provisions of Section 4612-4, General Code.

2. A rule and regulation of a board of trustees of a firemen's pension fund, duly adopted pursuant to the provisions of Section 4628, General Code, and Section 4612-4, General Code (former Section 4612, General Code, prior to the enactment of section 4612-5, General Code, providing that the widow of a deceased fireman, receiving death benefits from the Workmen's Compensation Fund of Ohio, shall not be eligible to receive a pension from the firemen's pension fund, and that the board of trustees shall not entertain an application for a pension "until such widow shall have been denied death benefits by the Industrial

Commission of Ohio," is a valid rule, unaffected by the provisions of Section 4612-5, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.