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RETIREMENT SYSTEM, PUBLIC EMPLOYEES—LATEST DATE A MEMBER OVER SEVENTY YEARS OF AGE MAY MAKE APPLICATION TO CONTINUE IN SERVICE—AUGUST 31, 1948—LATEST DATE TO CONTINUE IN SERVICE—JUNE 30, 1949—SECTION 486-59 G. C.—SENATE BILL 7, 97 GENERAL ASSEMBLY.

SYLLABUS:

Under the provisions of Section 486-59, General Code as amended by Senate Bill No. 7, of the 97th General Assembly, the latest date on which a member of the public employes retirement system who is over seventy years of age, may make application for continuation in service, is the 31st day of August, 1948, and the latest time to which such service may be continued, is June 30, 1949.

Columbus, Ohio, December 10, 1947

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

Dear Sir:

Your request for my opinion reads as follows:

“The last session of the General Assembly through Senate Bill No. 7 amended Section 486-59, General Code, relating to the date upon which compulsory retirement upon attainment of age seventy years will become effective, and the conditions under which, until that time, members over that age limit may continue in service.

Will you please issue an opinion indicating the final date on which an application for continuation in service past the compulsory retirement date may be filed with this office and also the final date that a public employe over this age limit may remain on the payroll of a political subdivision covered by the Public Employes Retirement Act.”

Section 486-59, General Code, as amended, in so far as pertinent to your inquiry reads as follows:

“On June 30 following the date upon which he becomes a member the retirement board shall retire any employe who was over seventy years of age at the time he became a member and

shall retire all other members, except elective officers, on the June 30 following the date upon which the age of seventy is attained. *Provided*, that until September 1, 1948, 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, or any part thereof, *such applications to expire on the June 30 following the date upon which they were filed unless renewed on or before the expiration date.* On and after September 1, 1948, no such applications for continuation in service shall be approved, and any member who accepts an allowance under Sections 486-59, 486-60 or 486-61 of the General Code, or who is compelled to retire at the age of seventy years and who withdraws his accumulated contributions in lieu of accepting a retirement allowance shall be ineligible for regular reemployment in any capacity which comes within the provisions of the public employes retirement act.”  
(Emphasis added.)

Here, it will be noted that the General Assembly has clearly provided that with the approval of the head of the employing department or institution an employe who has reached the age of seventy years may be retained in service for a limited period. The question is, what, in the light of the above legislative provision, is the time beyond which the service may not be extended?

The section is somewhat awkwardly worded, which is doubtless responsible for the fact that any question is raised as to its meaning.

Reading only the first part of the *proviso*, one might gain the impression that September 1, 1948, is the limit beyond which the employe member can not serve; but this conclusion is not clear or conclusive. The language used is equally capable of the construction that until the day next preceding September 1, 1948, his employer may give his approval and thereby secure the employe's retention of his position until the June 30 next following that date. Certainly, there is no language here which definitely states that September 1, 1948 shall be the limit of his right to continue in service.

When we pursue the inquiry into the second sentence, where again reference is made to September 1, 1948, it appears to me to become quite clear that the second interpretation above suggested is the only tenable one. The statute plainly indicates that a series of extensions may be had, each for a “year or any part thereof”. Then follows the statement, “such

applications to expire on the June 30 following the date on which they were filed, *unless renewed on or before the expiration date*". Then, it is distinctly stated that "*on and after September 1, 1948, no application for continuation shall be approved.*" This is certainly equivalent to providing that *up to and including August 31, 1948*, such application may be made and approved, and it would then follow that this approval shall be effective to continue the employe's service until June 30, 1949.

The phrase, "such *applications* to expire" clearly means not the application itself, but rather the period of extension resulting from the application and its approval. Furthermore, it appears to me clear that when an application is made shortly before June 30, say on June 20, for an extension for a year from June 30, it was certainly never intended that the effect of this application should "expire" in ten days. If such were the effect of the language, the General Assembly has cured it by adding the words "unless renewed on or before the expiration date."

An examination of other parts of Senate Bill No. 7, in which Section 486-59 was amended, will, I believe, greatly strengthen the conclusion above indicated. In the same act Section 486-63b, General Code, was also amended, reading in part as follows:

*"Until September 1, 1948, any employer, as defined by this act, may employ any person or persons receiving retirement allowances under the provisions of Sections 486-59, 486-60 and 486-61 of the General Code, such retired persons hereinafter to be referred to as superannuates, provided such employer shall formally declare that an emergency exists, and shall file with the retirement board a copy of such declaration, together with the name or names of the superannuates who are to be employed."*  
(Emphasis added.)

Here, the language "*until September 1, 1948, any employer as defined in this act, may employ*", etc. shows a very clearly expressed intent on the part of the legislature to fix a definite limit, to wit, September 1, 1948, beyond which employment of a previously retired employe could not continue.

Again the same act in amending Section 7896-101a, which is part of the law relating to the public school employes retirement system, uses the following language:

"Any provisions of law to the contrary notwithstanding, a

board of education may employ any person receiving a retirement benefit under the provisions of Sections 7896-100 or 7896-101 of the General Code, such retired person hereinafter to be referred to as superannuate, *provided such employment does not extend beyond September 1, 1948*, and provided further that the board of education employing such superannuate has declared by a formal resolution, passed by a majority vote of the board, that an emergency exists, \* \* \* " (Emphasis added.)

This language, "provided such employment does not extend beyond September 1, 1948", is more positive as a prohibition against extension beyond the definite limit than even that contained in Section 486-63b above noted. Both present a striking contrast to the language of Section 486-59 supra. It is fair to assume that if the General Assembly had intended to give the same effect to Section 486-59 as it plainly did to Section 486-63b and to Section 7896-101a, it would have used somewhat similar language in the three sections.

It is accordingly my opinion and you are advised that under the provisions of Section 486-59, General Code, as amended by Senate Bill No. 7, of the 97th General Assembly, the latest date on which a member of the public employes retirement system who is over seventy years of age, may make application for continuation in service, is the 31st day of August, 1948, and the latest time to which such service may be continued is June 30, 1949.

Respectfully,

HUGH S. JENKINS,  
Attorney General.