

1260.

STATE TEACHERS' RETIREMENT SYSTEM—WHETHER OR NOT CITY PENSION SYSTEM MAY MERGE WITH STATE RETIREMENT SYSTEM—TEACHERS' RIGHTS AND PRIVILEGES UNDER EACH LAW DETERMINED.

1. *No provisions of the act creating local district pension systems for teachers (sections 7875 to 7896, inclusive) have been repealed by the statutes creating a new state-wide teachers' retirement system, but the existence and rights of established local district pension systems for teachers are recognized in section 7896-23 of the new state-wide teachers' retirement system act.*

2. *Where a teacher begins her first service after September 1, 1920, as a teacher, in a city still maintaining a local district pension system, under the provisions of section 7877 such teacher must become a member of the local teachers' pension system in the district.*

3. *Where a teacher, who on or about September 1, 1920, becomes a member of the state teachers' retirement system, and who afterwards, while still a member of such state system, becomes a teacher in a city school district maintaining a local district pension system that did not merge with the state retirement system, such teacher loses her status as a member in the state retirement system and becomes a member of the local city district retirement system under the provisions of section 7877 G. C., which is still in force; and such teacher is entitled to withdraw her accumulated contributions from the teachers' savings fund of the state retirement system (sections 7896-25, 7896-40 and 7896-56 G. C.) The law does not contemplate that a teacher can be a member of two teachers' retirement systems in this state, nor can boards of education be required to contribute to the state retirement system and the local district system at the same time for one and the same teacher.*

4. *Teachers employed in a school district which maintains a local teachers' pension system are eligible to membership in the state teachers' retirement system, provided that such teachers are those who are not affiliated as members of such local teachers' pension system, having exercised the privilege extended to them by the provisions of section 7877 G. C.*

5. *Where a teacher who is a member of the state teachers' retirement system thereafter joins a local district teachers' retirement system, such teacher losing her membership in the said teachers' retirement system makes void her prior service certificate and the same is not renewable as provided in section 7896-32 G. C. Such teacher, to again become a member of the state retirement system, must come in as a new entrant, or as a member of a local district pension system, where such local district pension system has later merged with the state retirement system, as provided by section 7896-23.*

HON. W. E. KERSHNER, *Secretary, State Teachers' Retirement System, 71 East State Street, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter requesting the opinion of this department, and in which letter you say there are at present district pension systems (sections 7875 to 7896, inclusive, G. C.) in about twenty-five Ohio cities, and that while provision is made in the new teachers' retirement law by which these city pension systems may merge (section 7896-23 G. C.) with the state

retirement system, it is possible that one or two cities will refuse to complete such merger. Under these circumstances you desire to know:

- (1) "If a teacher begins her first service after September 1, 1920, as a teacher in a city still maintaining a local district pension system, must she become a member of the city pension system, or may she elect to become a member of the state retirement system? Will the fact that she is or is not a resident of the city have any effect?"

In arriving at a conclusion upon this question, as submitted by you, it must be borne in mind that house bill 359, "to provide a statewide retirement system for teachers in schools supported wholly or in part by public funds," and appearing in the General Code of Ohio as supplementary sections following section 7896 G. C., does not repeal the former teachers' pension statutes covering local school district systems, as provided by sections 7875 to 7896 G. C., inclusive. On the other hand the new teachers' pension law takes notice of the existence of these local pension systems in city districts in section 7896-23, which provides the method by which such local district pension system may merge with the state teachers' retirement system. It would appear that unless such merger were brought about, the intent is that both the local system and the state system should continue at one and the same time, but will be distinct in their operations, that is, the local pension system would continue under those sections of the statutes heretofore cited, but which have not been repealed, and the state teachers' retirement system would be operated under the provisions of house bill No. 359, the new teachers' pension law.

Section 7877, which is a part of the act covering a local teachers' pension system in a city district, reads in part as follows:

"All persons employed for the first time as teachers by a board of education which has created such a pension fund shall be deemed new teachers for the purpose of this act, but the term new teachers shall not be construed to include teachers serving under reappointments. *New teachers shall by accepting employment as such accept the provisions of this act and thereupon become contributors to said pension fund in accordance with the terms hereof. And the provisions of this act shall become a part of and enter into such contract of employment.*"

Under the above section it would appear that the new teacher beginning her first service after September 1, 1920, as a teacher under the local district pension system, would be compelled to become a member of the city pension system and does not have the privilege of electing as to whether she can belong to either the local district pension system or the state retirement system. The fact that she is or is not a resident of the city has no effect whatever upon the question, for if she becomes a member of the local teachers' pension system she might live outside of the city limits or the limits of the city district, but she would still be bound by the provisions of section 7877, supra, which takes no cognizance of the teachers' residence, but simply the question as to whether she is an employe of the board of education in that particular district.

Your second question reads as follows:

- (2) "In case of a teacher who on or after September 1, 1920, becomes a member of the state retirement system, and who afterwards while still a member of the state system becomes a teacher in a city maintaining a local district pension system that did not merge with the state system, must such

teacher drop her membership in the state system and become a member of the local city system, or may she retain her membership in the state system and refuse to become a member of the city system?"

As far as can be ascertained by a careful study of the new teachers' pension law covering statewide retirement of teachers, it appears that the condition to which you direct attention is one that is not treated upon in the statewide teachers' retirement act. The condition which you indicate in your question might obtain frequently as in the instance of where a teacher belonging to the state teachers' retirement system, during 1920-21, and whose employer was a rural or village board of education in Lucas county, would take employment under the board of education of the Toledo city school district for the school year of 1921-22. The city school district of Toledo operates a local pension system under the former statutes, not yet repealed, and reference to which has been made heretofore. At that time the local pension system of the city district of Toledo might still be in existence; that is to say, it had not merged (section 7896-23) with the state retirement system or had indicated any intention so to do. Your question then is, if this teacher (having a status in the state retirement system), by entering the employ of the Toledo board of education, which maintains a local pension system for teachers, would lose such status as a member of the state system and become a member of the local district system in place thereof. As indicated heretofore, section 7877 G. C. provides that the teacher entering the employ of the board of education for the first time shall be considered to be a new teacher and by accepting employment in such school district where there is a local pension system, *accepts the provisions of the local district pension system act* and becomes a contributor to the pension fund of such district and the requirements appearing in such section enter into and *become a part of the contract of employment.*

Section 7896-23 reads in part as follows:

"Members of a local district pension system maintained under the laws of the state of Ohio from appropriations or contributions made wholly or in part by any employer and existing at the time this bill becomes a law are hereby excluded from membership in this retirement system. * * * ."

In condensing this language to fit the question at hand, it would read as follows:

"Members of a local district pension system * * * existing at the time this bill becomes a law, are hereby excluded from membership in this retirement system."

This section speaks of the status of the system existing at the time the new teachers' retirement system act became a law, and not as to the status of the teacher at that time.

As an indication that this condition was possibly not thought of at the time of the new enactment, attention is invited to section 7896-25, which reads:

"The membership of any person in the retirement system shall cease if he withdraw his accumulated deductions, or if he retire on a pension as provided in this act, or if he die, or if, in any four-year period after he last became a member, he shall render less than two years of service as a teacher."

It will be noted in this section that no reference is made to a condition of where

a member might still, while employed in teaching, in the state of Ohio, leave the jurisdiction of the statewide retirement system and come under the jurisdiction of the local pension system, as indicated in section 7877 G. C., and yet this very thing could happen as indicated by you, in which event the teacher would have to be in one system or the other, it not being contemplated that a person could be a teacher and a member of two retirement systems in this state at one and the same time. If this were possible, considerable confusion would ensue for the reason that being compelled to obey the provisions of two laws which are distinct in their jurisdiction, although upon the same subject, the teacher would contribute to two systems and the board of education as the employer would also be compelled to contribute to two systems, which is hardly to be contemplated. Thus section 7896-43 reads:

"Each teacher who is a member of the retirement system (state) shall contribute four per centum of his earnable compensation * * * to the teachers' savings fund. Each employer shall deduct from the compensation of each contributor on each and every payroll of such contributor for each and every payroll period subsequent to the date upon which such contributor became a member an amount equal to four per centum of such contributor's earnable compensation, provided that the amount of the contributor's earnable compensation in excess of two thousand dollars per annum shall not be considered. * * * ."

If the teacher were a member of the state retirement system, the above section of the state retirement law would apply, and if such teacher were employed thereafter in a city school district which maintained a local pension system, additional deductions from her salary would have to be made under the provisions of section 7877 G. C., which reads in part as follows:

"After the election of the board of trustees herein provided for, two dollars (\$2) shall be deducted by the proper officers from the monthly salary of each teacher who accepted such provisions, and from the salary of all new teachers such sum to be paid into and applied to the credit of such (local) pension fund; and such sum shall continue so to be deducted during the term of service of such teacher."

The interests of the board of education and the public are also to be considered because in a city district which maintains a local pension system the board of education must make certain contributions to such local teachers' pension fund under the provisions of the law under which such local system was originally formed. Thus section 7895 G. C. reads:

"The board of education in any school district which has created, or shall create, a teachers' pension fund, semi-annually, shall pay from the contingent fund of such school district into such fund, not less than one per cent nor more than two per cent of the gross receipts of the board raised by taxation, which shall be applied to the payment of teachers' pensions, as hereinbefore provided."

If the teacher entering the employ of the board of education which maintained a local pension system could still remain a member of the state retirement system, then the board of education in such city district maintaining a pension system of its own would have to comply with the provisions of section 7896-44, which reads in part as follows:

"Each employer of a teacher who is a member of the retirement system shall pay to the employers' accumulation fund a certain per centum of the earnable compensation of each such teacher to be known as the 'normal contribution' and a further per centum of the earnable compensation of each such teacher to be known as the 'deficiency contribution.' The amount paid by an employer on account of the deficiency contribution shall after the first payment be at least three per centum greater than the amount paid by him during the preceding year. The rates per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system and shall be certified to the employers by the retirement board after each actuarial valuation. Until the first such certification, the normal contribution shall be two and eight-tenths per centum of the members' salaries and the deficiency contributions shall be two and seventy-seven hundredths per centum of the members' salaries."

From the above section it will be noted that the sum of the two contributions required of a board of education paying into the state teachers' retirement fund would be five and fifty-seven hundredths per centum of the members' salaries, such contributions to be paid to the state retirement board, while at the same time the board would be compelled to comply, if operating a district pension system of its own, with the provisions of section 7895 G. C., that "not less than one per cent nor more than two per cent of the gross receipts of the board raised by taxation" shall be applied to the payment of teachers' pensions. One of these receipts of the board raised by taxation would be the tuition fund of the district, a portion of which fund would be used to meet the salary of the teacher in question. That is to say, the salary of the teacher raised by taxation would have to be computed in arriving at the per cent that the board of education was to pay into its own teachers' pension fund, while the same board of education, if employing a member of the state retirement system, would pay (at the present time and until the first certification as to actuarial values had been made) five and fifty-seven hundredths per centum of the salary of such teacher to be paid to the state teachers' retirement fund, thus putting the board of education of such district in the position under these two laws of contributing to two teachers' pension funds for one and the same person.

Attention is also invited to the provision of section 7896-50, which indicates that the teacher could have no status in the state retirement system unless the employer of such teacher made the proper certification to the state retirement board, for that section reads as follows:

"During September of each year, or at such other time as the retirement board shall approve, each employer shall certify to the retirement board the names of all teachers to whom this act applies."

The contemplation of the law is that the employing board shall certify the name of the employed teacher to the state retirement system and make the proper contribution to such system because unless the employer contributed his share toward the respective funds which the employers are to keep up, the intent of the state retirement law would not be carried out. But, as regards the contributions to be made by a board of education to the state retirement system, due attention should be paid to section 7896-25 G. C., which provides that a member of the state retirement system may still remain a member of such system even though not teaching at a particular time, for the section says that in any four-year period after he last became a member the teacher shall render not less than two years of service as a teacher, which indicates that the teacher could have a leave of absence from her

employing board of education for a period not exceeding two years in any four-year period. This was likely inserted in the law for the purpose of permitting members of the state retirement system to further complete their education by attending college for one or two years in any four-year period, or on the other hand seeking another climate in order to recuperate health, and it must be said that leave of absence under these circumstances does not in any way militate against the membership of the teacher, providing such teacher during such leave of absence does not join a local district pension system maintained under the laws of the state of Ohio, for if such teacher does join a local district pension system, the teacher then comes in conflict with the provisions of section 7896-23, *supra*, that a member of a local district pension system is excluded from membership in the state retirement system.

It must be remembered that a teacher who secured a leave of absence from the employing board of education is still the employe of that board of education and if service as a teacher was taken in a school district which maintained a local district pension system, the leave of absence granted by the first employing board would automatically be ended.

It is pertinent to point out at this time that there could be members of the state retirement system in a school district which maintained a local district pension system. Only the members of the local district pension system are excluded from membership in the state retirement system under the provisions of section 7896-23. Thus it is found that under the provisions of section 7877 G. C., which is a part of the local teachers' pension system act, at the time of the adoption of such system in any school district, the teachers in that district *were given the privilege of accepting or rejecting* the provisions of the local district pension system law. It is entirely possible that in these districts certain teachers still employed in the district schools may not be members of the local district pension system, they having accepted the privileges extended in section 7877 G. C. It is further found that section 7896-22 stipulates who shall constitute the membership of the state retirement system and then gives those who must be excluded, among which number are the "members of the local district pension system maintained under the laws of the state of Ohio." (Section 7896-23). Here it says that only the members of the local system are to be excluded and not the teachers in such local school district, and therefore a teacher in the public schools of a school district maintaining a local district pension system may become a member of the state retirement system, provided that such teacher is not a member of the local district pension system. This of course would apply only to the *older teachers who took advantage of the privileges extended to them under the provisions of section 7877 G. C.*, as heretofore pointed out; that is to say, *teachers employed in that district who at this time are not members of any teachers' pension system.*

It is also of importance to note what might be the results to the teacher member of the state retirement system where such teacher, having membership in such state system, thereafter entered the employ of a board of education in a school district maintaining a local pension system. As has been pointed out, this teacher becomes a "new teacher" (Section 7877) when she enters the employ of the local board of education which maintains the local pension system and thereby accepts the provisions of the local district pension system act.

It has been held in a prior paragraph of this opinion that this would automatically close the membership of the teacher in the state retirement system. One of the important features to any teacher who is a member of the state retirement system is to keep in effect any prior service certificate granted by the state retirement board, and bearing upon such prior service the following statutes are pertinent:

"Section 7896-29. Subject to the above restrictions and to such other rules and regulations as the retirement board shall adopt, said board shall issue to each present-teacher a certificate certifying to the aggregate length of all his prior service as a teacher, as defined in this act."

"Section 7896-31. So long as membership continues, a prior-service certificate shall be final and conclusive for retirement purposes as to such service, unless modified by the retirement board upon application made by the member or upon its own initiative within one year after the date of its issuance or modification, or in case a mistake is found therein within one year of the time such mistake is so found."

"Section 7896-32. When a present-teacher ceases to be a member his prior-service certificate shall be void and not renewable."

"Section 7896-40. A contributor who ceases to be a teacher for any cause other than death or retirement, upon demand, within ten years after such cessation of service, shall be paid the accumulated contributions standing to the credit of his individual account in the teachers' savings fund.
* * * "

It must follow then that if a teacher loses membership in the state system by joining a local teachers' pension system, prior-service certificates shall become void and are not renewable, and thereafter such teacher, if she joins the state retirement system, has but two avenues open, and these are:

1. Teaching in a school district which maintains a local teachers' pension system, which thereafter merges, under the provisions of section 7896-23, with the state retirement system.

2. If still later she was a teacher in any other district after having lost membership because of joining a local pension system, she would have to come in as a new-entrant and certain provisions of section 7896-30 might apply in her particular instance.

If a teacher who was a member of the state retirement system thereafter joined a local pension system for teachers, and then stayed in such district maintaining a local pension system, if such system was as sound financially as the state system and the benefits were as large as under the state system, she would not suffer any material loss, since she would receive prior-service credit in the city system. It would appear that if a teacher, who becomes a member of the state retirement system after September 1, 1920, and afterward, while still a member of the said system, becomes a teacher in a city maintaining a local district pension system which has not merged with the state system, the membership of the teacher in the state system would automatically disappear under the provisions of section 7877, which provides that new teachers in a district operating a pension system of its own accept the provisions of the local district pension act, which act is separate and distinct from the provisions of the statewide teachers' retirement law.

That none of the provisions of the local teachers' pension act have been repealed either directly or by implication, is at once apparent by referring to the decision of the Ohio supreme court in the case of William M. Shinnich, et al., vs. State of Ohio, on relation of W. C. Bowers, decided May 11, 1920, wherein the court took cognizance of the existence in full effect of the act which is known as the local district teachers' pension law. As long as section 7877 of such act reads as it does now, the teacher taking employment could not refuse to become a member of the local system because of the mandatory language appearing in such section.

It is therefore the opinion of this department, based upon the statutes cited, that:

1. No provisions of the act creating local district pension systems for teachers (Sections 7875 to 7896, inclusive) have been repealed by the statutes creating a new state-wide teachers' retirement system, but the existence and rights of established local district pension systems for teachers are recognized in section 7896-23 of the new statewide teachers' retirement system act.

2. Where a teacher begins her first service after September 1, 1920, as a teacher, in a city still maintaining a local district pension system, under the provisions of section 7877 such teacher must become a member of the local teachers' pension system in the district.

3. Where a teacher, who on or about September 1, 1920, becomes a member of the state teachers' retirement system, and who afterwards, while still a member of such state system, becomes a teacher in a city school district maintaining a local district pension system that did not merge with the state retirement system, such teacher loses her status as a member in the state retirement system and becomes a member of the local city district retirement system under the provisions of section 7877 G. C., which is still in force; and such teacher is entitled to withdraw her accumulated contributions from the teachers' savings fund of the state retirement system. (Sections 7896-25, 7896-40 and 7896-56 G. C.) The law does not contemplate that a teacher can be a member of two teachers' retirement systems in this state, nor can boards of education be required to contribute to the state retirement system and the local district system at the same time for one and the same teacher.

4. Teachers employed in a school district which maintains a local teachers' pension system are eligible to membership in the state teachers' retirement system, provided that such teachers are those who are not affiliated as members of such local teachers' pension system, having exercised the privilege extended to them by the provisions of section 7877 G. C.

5. Where a teacher who is a member of the state teachers' retirement system thereafter joins a local district teachers' retirement system, such teacher losing her membership in the said teachers' retirement system makes void her prior service certificate and the same is not renewable as provided in section 7896-32 G. C. Such teacher, to again become a member of the state retirement system, must come in as a new-entrant, or as a member of a local district pension system, where such local district pension system has later merged with the state retirement system, as provided by section 7896-23.

Respectfully,
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