

2. The use of fog lights on the forward part of a motor vehicle carrying bulbs in excess of thirty-two candle power is in violation of the provisions of Section 6310-1, General Code, and therefore prohibited.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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TEACHER RETIRED ON PENSION—EMPLOYMENT BY  
BOARD OF EDUCATION, WHEN.

*SYLLABUS:*

*A teacher who has been retired on a pension as provided for in Section 7896-25, General Code, may be employed by a board of education in a position which comes under membership in the State Public School Employes' Retirement System.*

COLUMBUS, OHIO, October 11, 1937.

*Retirement Board, Ohio State Teachers Retirement System, Ohio State Savings Building, Columbus, Ohio.*

GENTLEMEN: This will acknowledge receipt of your recent communication, which reads as follows:

"A situation has been called to my attention in which a retired teacher is an applicant for the position of assistant truant officer, which position would carry with it membership in the new State Public School Employes' Retirement System. The question therefore arises:

Is it possible for a retired teacher to be employed by a board of education in a position which comes under membership in the School Employes' Retirement System?

I shall thank you for your opinion on this point."

For the purpose of answering your communication, I assume that the "retired teacher" to whom you refer, is retired on a pension as provided for in the State Teachers' Retirement System Act (Sections 7896-1 to 7896-63, inclusive, General Code). If this assumption is correct, the membership of said "retired teacher" in the retirement system has ceased, by reason of the following provision contained in Section 7896-25, General Code:

"The membership of any person in the retirement system shall cease if he withdraws his accumulated deductions or if he retire on a pension as provided in this act. \* \* \*"

There is no provision in the said State Teachers' Retirement System Act which prevents or prohibits a teacher who has retired on a pension, from being employed by a board of education, other than as a teacher. Therefore, a retired teacher is not barred from being employed by a board of education as assistant truant officer. However, the position of assistant truant officer is such a position where one is "regularly employed in the public schools," and therefore it comes within membership in the State Public School Employes' Retirement System, and the question presents itself as to whether or not such assistant truant officer, being a "retired teacher," is entitled to membership in the State Public School Employes' Retirement System.

Section 7896-65, General Code, which establishes the Public School Employes' Retirement System, provides in part, as follows:

"A state public-school employes' retirement system is hereby established for the employes of the public schools of the state of Ohio, who are not members of the state teachers' retirement system, or of any other retirement system established under the laws of this state, which shall include the several funds created and placed under the management of a 'retirement board' for the payment of retirement allowances and other benefits under the provisions of this act. \* \* \*"

It is to be observed from the foregoing provisions of Section 7896-65, supra, that the retirement system is established for the employes of the public schools of the State of Ohio, who are not members of the state teachers' retirement system, or of any other retirement system established under the laws of this state.

Section 7896-64, General Code, defines an "employee" as follows:

"The following words and phrases as used in this act, unless a different meaning is plainly required by the context, shall have the following meanings:

\* \* \*

\* \* \*

\* \* \*

'Employee' shall mean any person regularly employed in the public schools of the state of Ohio other than members of the state teachers' retirement system or any other retirement system established under the laws of this state; and

any employe, not a member of the state teachers' retirement system, or of any other retirement system established under the laws of this state, in any school or college or other institution wholly controlled and managed, and wholly or partly supported by the state or any subdivision thereof, the board of trustees or other managing body of which shall accept the requirements and obligations of this act. In all cases of doubt the retirement board shall determine whether any person is an employe, as defined in this paragraph, and its decision shall be final."

It is to be noted from the language used in defining an "employe" that any person regularly employed in the public schools of the State of Ohio, other than members of the state teachers' retirement system, or any other retirement system established under the laws of this state, is an "employe," and is entitled to membership if said employe comes within any one of the classifications set forth in Section 7896-87, General Code.

The membership of the retired teacher in the state teachers' retirement system having ceased, there is nothing to prevent said "retired teacher," upon being appointed as an assistant truant officer, from being an "employe" as defined in the provisions of Section 7896-64, *supra*, and from securing membership in the State Public School Employes' Retirement System.

Therefore, in specific answer to your question it is my opinion that, it is possible for a retired teacher to be employed by a board of education in a position which comes under membership in the State Public School Employes' Retirement System.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*