

3923

1. MUNICIPALITY—TRUSTEES OF COLLEGE OR UNIVERSITY SUPPORTED AND CONTROLLED BY MUNICIPALITY AND ORGANIZED ON OR BEFORE JUNE 30, 1939—MAY BY RESOLUTION ACCEPT REQUIREMENTS AND OBLIGATIONS OF STATUTES RELATING TO SCHOOL EMPLOYES RETIREMENT SYSTEM—AFTER CERTIFICATION OF RESOLUTION, NONTEACHING EMPLOYES SHALL CEASE TO BE MEMBERS OF PUBLIC EMPLOYES RETIREMENT SYSTEM AND BECOME MEMBERS OF SCHOOL EMPLOYES RETIREMENT SYSTEM—SECTIONS 7896-64 THROUGH 7896-130 G. C.
2. TRUSTEES OF ANY SUCH COLLEGE OR UNIVERSITY, IF IT IS DESIRED TO TRANSFER THE NONTEACHING EMPLOYES TO THE SCHOOL EMPLOYES RETIREMENT SYSTEM, MUST PASS RESOLUTION AND CERTIFY IT TO THE RETIREMENT BOARD WITHIN NINETY DAYS FROM TIME OF ORGANIZATION OF SUCH INSTITUTION.

SYLLABUS:

1. Under the provisions of Section 7896-87, General Code, the trustees of a college or university supported and wholly controlled by a municipality and organized on or before June 30, 1939, may at any time by formal resolution accept the requirements and obligations of the statutes relating to the school employes retirement system (Sections 7896-64 to 7896-130, General Code), and from and after the certification of such resolution to the retirement board of said system, the non-teaching employes of said institution shall cease to be members of the public employes retirement system and become members of said school employes retirement system.

2. If the trustees of any such college or university organized after June 30, 1939, desire to transfer the non-teaching employes of such institution to said school employes retirement system, it must pass such resolution and certify it to such retirement board within ninety days from the time of the organization of such institution.

Columbus, Ohio, October 20, 1948

Mr. Ward Ashman, Executive Secretary
School Employes Retirement System of Ohio, Columbus, Ohio

Dear Sir:

You have submitted for my opinion certain questions relative to the right of the Trustees of Akron University to take such action as would

bring their non-teaching employes within the purview of the school employes retirement system. You call my attention to Sections 7896-64 and 7896-87, General Code, which are part of the law governing your system, and which undertake to define "employes," as that word is used in the law. The questions which you have submitted, are as follows :

"1. What is the date referred to in Section 7896-87 of the General Code, concerning which any institution coming into existence thereafter, would have but ninety days to accept the requirements and obligations of the School Employes Retirement Act, provided the non-teaching employes thereof were not members of the other retirement systems defined in the law ?

"2. Was the University of Akron in existence on the date referred to in Section 7896-87 of the General Code ?

"3. Provided the Board of Trustees of Akron University is not restricted by any of the provisions of the School Employes Retirement Act from accepting its requirements and obligations, are there any other statutory restrictions which would prevent the said Board from accepting the requirements and obligations of the School Employes Retirement Act?"

The questions which you have raised relate particularly to the language of Section 7896-87. That section as originally enacted in 1937, when the system was set up, read as follows :

"The membership of the retirement system shall consist of the following :

"(a) All employes in service on the first day of September, nineteen hundred and thirty-seven, except employes who have filed with their employer a statement in writing requesting exemption from membership or employes who are excluded by the provisions of this act.

"(b) All employes who became employes or who were re-appointed as employes after the first day of September nineteen hundred and thirty-seven except employes who are excluded by the provisions of this act.

"(c) The employes in any school or college or other institution supported in whole or in part by the state or any subdivision thereof and wholly controlled and managed by the state or any subdivision thereof shall become members on the same terms and conditions as the employes in the public schools, provided that the board of trustees or other managing body of such school, college or other institution, if such institution is now in existence or if in existence on said date, shall agree by formal resolution *adopted before September first, nineteen hundred and thirty-eight* to accept

all the requirements and obligations imposed by this act upon employers of members. Any institution which comes into existence as such thereafter shall have ninety days in which to accept said requirements and obligations. A certified copy of said resolution shall be filed with the retirement board. When such resolution shall have been adopted and a copy of it filed with the retirement board, it shall not later be subject to rescindment or abrogation. Service in such schools, colleges or other institutions shall be then considered in every way the same as service in the public schools so far as the purposes of this act are concerned.

“(d) All other employes who become contributors under the provisions of this act.” (Emphasis added.)

It seems clear that the words which I have underscored, gave to publicly supported colleges and schools the right within one year from September 1, 1937, to adopt and file a resolution which would bring their non-teaching employes within the purview of your system, and that a failure to take such action within that period, would effectively bar such institution from taking any such action thereafter. It is worthy of note that in the law relating to the state teachers retirement system there was found in Section 7896-22, General Code, a substantially identical provision relative to membership of teachers in that system, and in precisely the same language, one year was allowed from the time the system became operative, within which the managing body of such institution could file its acceptance of the provisions of the teachers retirement law.

In the case of the teachers retirement system, that one year limitation has been allowed to remain in the act without change. In the case of your system, the General Assembly by an act passed on March 28, 1939, amended Section 7896-87 supra, the only change being the elimination of the words which I have underscored. Plainly, the effect of that amendment was to eliminate any deadline within which such action could be taken, and unless there is some other inconsistent provision of the law, I should have no hesitancy in holding that any institution mentioned in that section, which was in existence on September 1, 1937 or when the section as amended took effect, to wit, June 30, 1939, may adopt and file its resolution of acceptance at any time.

This brings us to a consideration of certain sections of the law relating to the public employes retirement system. That system, which had theretofore been known as the state employes retirement system, was by act of the General Assembly, passed on December 22, 1937, changed to the name

of the public employes retirement system, and its scope enlarged to include employes of municipalities and other political subdivisions, such additional employes to become members of the system *as of July 1, 1938*. Sections 486-33a, 486-33b and 486-33c related to this extension. By the terms of these sections all municipal employes became members of the system unless within a certain time they elected in writing to exempt themselves. These sections underwent slight amendments at the same session, consisting so far as the sections in question are concerned, in the extension of the scope of the system to park district employes. This latter act is found in 117 O. L., page 840. At the same session of the General Assembly the state public school employes retirement system was created, to become operative September 1, 1937 (117 O. L., 122). Section 7896-87, being a part of the act, appeared in precisely the words which I have hereinabove quoted. It will be recalled that that section as it then stood, required any publicly supported school or college, if it desired to have its non-teaching employes placed under the school employes retirement system, to take such action by resolution on or before September 1, 1938.

In view of the statutes to which I have just referred, making all municipal employes members of the public employes retirement system from and after July 1, 1938, and the statute giving the state or municipally supported colleges from September 1, 1937 until September 1, 1938, to take their non-teaching employes out of that system and put them into the new system, it would appear logical to conclude that *until the authorities of such school did take such action, their employes became eligible for membership in the public employes retirement system*, subject to the right of the college trustees to change them over into the other system. And it would further appear logical to assert that when the time limit set out in Section 7896-87 expired, to wit, September 1, 1938, if no such action had been taken, such employes would remain members of the public employes retirement system. However, by an act passed March 23, 1939, said Section 7896-87 was amended, by eliminating the words "adopted before September 1, 1938," which was the original time limit within which such institution could transfer its non-teaching members to the new retirement system. It is worthy of note that *the same act in which this amendment was accomplished*, also made certain amendments in Section 486-33c, whereby the scope of the public employes retirement system was further enlarged to include employes of a sanitary district.

It might be argued that when the legislature saw fit to bring all employes of a municipality into the public employes retirement system, non-teaching employes of municipal colleges were placed once and for all, in that system. It appears to me, however, that we must give effect to the action of the legislature in eliminating from Section 7896-87 the time limitation originally contained therein and that the effect of that change was to open the door for the trustees of these institutions to place these non-teaching employes in the school employes retirement system, if they so desired, and that they might take such action whenever they saw fit, regardless of the original status of these employes.

Inasmuch as the conclusion above stated takes care of all such institutions as had been organized up to the effective date of this amendment, I can find no other interpretation for the word "thereafter" except to consider it as equivalent to "hereafter," and accordingly it would appear that any such institution organized after June 30, 1939, desiring to accept the requirements and obligations of your system for its non-teaching employes, must take such action within ninety days after its organization or be barred in the future from taking such action.

I realize that there is no apparent reason why those institutions which are organized "hereafter" should be limited in their action to ninety days, while the bars are thrown down completely as to older institutions, but when the legislature has spoken in unmistakable terms, we are obliged to give effect to its mandate, regardless of the consequences. *Slingluff vs. Weaver*, 66 O. S., 621; *State ex rel. Shaffer vs. Defenbacher*, 148 O. S., 465.

I am not able to find any other provision of law whereby the board of trustees of Akron University would be restricted or prevented from accepting the requirements and obligations of the school employes retirement act.

I believe this answers your first and third questions. Your second question is as to the date when the University of Akron was organized. I am informed that it was organized in the year 1913.

Respectfully,

HUGH S. JENKINS,
Attorney General.