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TEACHERS' RETIREMENT SYSTEM—WHERE MEMBER REACHED AGE OF SEVENTY, CONSENT OF EMPLOYER TO RETIREMENT SECURED—DUTY OF RETIREMENT BOARD TO RETIRE HIM AS OF AUGUST 31, NEXT ENSUING.

## SYLLABUS:

When a member of the state teachers' retirement system has reached the age of seventy, and the consent of his employer to his retirement has been secured, it is the duty of the retirement board to retire him as of the 31st day of August next ensuing.

Columbus, Ohio, August 22, 1946

Mr. George M. Pogue, Secretary, The State Teachers Retirement System of Ohio  
Columbus, Ohio

Dear Sir:

I have before me your request reading as follows:

“Will you please provide us with your opinion as to whether or not the member of The State Teachers Retirement System of Ohio referred to below must be retired by the Retirement Board August 31, 1946, in accordance with the provisions of Section 7896-34 G. C. of Ohio?”

A teacher with four years of contributing service in three different districts was employed on a limited contract and served in a city school district for the school year 1945-46. This was the first year of employment in said city district. At the time of such employment the member had attained age seventy-one. He now has five years of service credit.

The employing board of education did not give said teacher written notice on or before March 31, 1946 of its intention not to reemploy him. Said teacher now contends that he was thereby reemployed for the school year 1946-47 in accordance with the provisions of Section 4842-8, G. C., paragraph 5.

Section 7896-34, G. C., provides for the compulsory retirement of members who have attained age seventy as follows:

\* \* \* At the end of the school year in which they become members the retirement board shall retire all teachers who were over seventy years of age at the time they became members and shall retire all other members at the end of the school year in which the age of seventy is attained, provided in each case the consent of the employer is secured.'

On May 16, 1946, the Secretary of the Retirement Board was advised by said employer that it did consent to the retirement of said member.

Shall the Retirement Board retire said member in accordance with the provisions of Section 7896-34, or are said provisions ineffective because of the provisions of Section 4842-8, G. C.?

It should be further observed that paragraph 2 of Section 4842-7, G. C., provides for the termination of continuing contracts by the application of Section 7896-34, G. C., but such provision is not made with respect to the termination of a limited contract."

The portion of Section 4842-8, General Code, to which you call attention reads as follows:

"Any teacher employed under a limited contract shall at the expiration of such limited contract be deemed re-employed under the provisions of this act at the same salary plus any increment provided by the salary schedule unless the employing board shall give such teacher written notice on or before the thirty-first day of March of its intention not to re-employ him. Such teacher shall be presumed to have accepted such employment unless he shall notify the board of education in writing to the contrary on or before the first day of June, and a contract for the succeeding school year shall be executed accordingly."

In the light of your statement that the teacher in question had been employed in a city district for the school year of 1945-46, and that the board of education did not on or before March 31, 1946, give him written notice of its intention not to re-employ him, those facts would, in the absence of any other qualifying circumstances, appear clearly to give the teacher the right to consider that he was re-employed for the following school year. It may be noted in this connection that the "school year" as that term is used in the school code is defined by Section 4838, General Code, as beginning on the first day of July of each calendar year and closing on the thirtieth day of June of the succeeding calendar year. These words appear to have a different meaning as used in the laws relating to the state teachers' retirement system. By the provision of Section 7896-1, General Code, it is said:

"The year for the administration of this act shall begin September first and end August thirty-first next following."

The words "school year" are used a number of times in the statute relating to your system (Sections 7896-1 to 7896-63, General Code) and they appear both in the light of the definition above quoted and in the light of the context where used, to refer not to the school year defined by the school code but to the "year" as defined by the retirement law, to-wit, beginning September 1 and ending August 31 of the following year.

Section 7896-34, General Code, provides as follows:

"At the end of the school year in which they become members the retirement board shall retire all teachers who were over seventy years of age at the time they became members and shall retire all other members at the end of the school year in which the age of seventy is attained, provided in each case the consent of the employer is secured."

Section 7896-35, General Code, appears in part to restate the provisions of the preceding section just quoted but to make it clear that the term "school year" is the year as defined in the first section of the retirement act. Said Section 7896-35 reads in part as follows:

"A member, except a new entrant with less than five years of service credit, who has attained sixty years of age or who has thirty-six years of service credit may apply for superannuation retirement. Upon superannuation retirement which shall be

effective as of the thirty-first day of August next following application, a teacher shall be granted a retirement allowance consisting of: \* \* \*”

That the end of the “school year” as referred to in the law relating to teachers’ retirement is August 31st was expressly held in *Poehls v. Young*, 144 O. S., 604.

It will be noted that the above quoted Section 7896-34 provides explicitly that at the end of the school year in which they become members of the system, the retirement board *shall retire* all teachers who were over seventy years of age at the time they became members, and furthermore that the retirement board *shall retire* all other members at the end of the school year in which the age of seventy is attained. This obligation which in its terms appears to be mandatory is however qualified by the provision that in each case the consent of the employer is to be secured. In the case you present it appears clearly that the teacher in question is a member of the system, that he is over seventy years of age, and that the consent of his employer to his retirement was filed with the retirement board on May 17, 1946. The only possible complication would appear to be that at the time the employing board gave its consent to the teacher’s retirement, it had by its failure to notify him of its intention not to re-employ him, in effect given him a contract of re-employment for the following school year, to-wit from July 1, 1946.

As between the teacher and the board by which he had been employed, there may be a serious question whether the board in attempting to give its consent to his retirement acted in violation of a contractual obligation to the teacher. On the other hand, it might be claimed that the teacher entered into his original contract with knowledge of the provisions of the law relating to compulsory retirement at the age of seventy, and that the statute in relation thereto was to be read into his contract. I do not consider it necessary at this time to determine the rights of the teacher and the board of education as between themselves. Nor do I consider that in complying with the law relative to compulsory retirement it is necessary for the retirement board to inquire into the exact contractual status of the teacher or pronounce judgment in case of a controversy. It is perfectly plain that whether the board of education did or did not obligate itself to continue the teacher in service for another year it was nevertheless his employer on May 16, 1946, the time when it gave its

consent to his retirement. That consent supplies the only element which you require to put into force your obligation to retire the teacher at the end of the "school year" as defined in the retirement act, to-wit, August 31, 1946.

I note from your letter that the teacher in question had reached the age of seventy-one when he was given the one year contract for 1945-1946. While the statute fixes seventy as the age for compulsory retirement, yet since it is subject to the consent of the employer, it seems obvious that when that consent is withheld until a later time, it is equally effective to cause the retirement board to take action, effective the following August 31st.

Specifically answering your inquiry, it is my opinion that when a member of the state teachers' retirement system has reached the age of seventy, and the consent of his employer to his retirement has been secured, it is the duty of the retirement board to retire him as of the 31st day of August next ensuing.

Respectfully,

HUGH S. JENKINS,  
Attorney General.