

In the case of *Clark vs. Commissioners*, 58 O. S., 107, it was held:

"To warrant the payment of fees or compensation to an officer, out of the county treasury, it must appear that such payment is authorized by statute."

While in the cases above cited the question involved the fees of the clerk of courts, which fees the clerk at that time received as a part of his compensation and the statute has been changed giving the clerk of courts a salary in lieu of all fees, it is believed that the principle is the same in so far as collecting the fees for services rendered to the public is concerned.

In the case of *Haserodt vs. State ex rel.* 6 O. App. Rep.; 354, the issue was raised as to what fees a chief of police was entitled to receive under a statute which provided that his fees should be the same as provided for constables and sheriffs in certain cases. It appeared that under such circumstances the constable would receive one fee while the sheriff would receive another. In view of the two different provisions relative to the fees of the constable and sheriff, the court in this case decided that the legislature had failed to make any provision for fees for the chief of police in such cases because of the indefiniteness of the language used. It is believed that this case by analogy applies to the situation which you present.

In view of the foregoing, the conclusion is compelled that the legislature failed to make a sufficient provision to justify the clerk of courts to charge any fee for the registering of an optometrist's certificate. However, the fact that the legislature failed to provide a fee for the registering of said certificates will not excuse the clerk of courts from making said registry.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1200.

STATE TEACHERS' RETIREMENT SYSTEM—ALL TEACHERS TO WHOM ACT APPLIES MUST BE CERTIFIED BY EMPLOYER TO STATE RETIREMENT BOARD—WHEN ACT APPLIES TO TEACHERS OVER SEVENTY YEARS OF AGE—WHEN BOARD HAS AUTHORITY TO RETIRE TEACHERS—EFFECTIVE DATE OF RETIREMENT—WHEN TEACHERS OVER SIXTY YEARS OF AGE MAY RETIRE—EFFECTIVE DATE OF RETIREMENT.

1. Under the provisions of section 7896-50 G. C. the names of all teachers to whom the teachers' requirement act applies, must be certified by the employer to the state retirement board, and teachers over seventy years of age prior to September 1, 1920, must be re-employed or re-appointed during the school year 1920-1921, in order to become members of the retirement system.

2. The state retirement board is without authority to retire any teacher soon after the beginning of the school year, 1920-21, or at any time during such school year, for the law provides in various sections that the retirement of teachers eligible to retirement shall be effective as of the end of the school year then current.

3. Retirement of teachers over seventy years of age takes place on August 31 of the school year in which they become members, and the state retirement board shall automatically retire all other teachers who are members at the end of the

school year in which the age of seventy is attained. Pension to any teacher could not start on any day prior to the end of the school year in which such teacher was retired.

4. Teachers over sixty years of age who have taught prior to September 1, 1920, and are members of the state teachers' retirement system during the school year 1920-21, may retire by filing with the retirement board an application for retirement in accordance with the provisions of section 7896-34 G. C., but retirement and pension would not be effective if granted by the state retirement board until the end of the school year then current.

COLUMBUS, OHIO, May 3, 1920.

HON. W. E. KERSHNER, *Secretary, State Teachers Retirement System, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion upon the following questions:

“1. Must teachers over seventy years of age prior to September 1, 1920, be re-employed or re-appointed for the school year 1920-21, to become members of the retirement system?”

2. Must such teachers be in service the entire school year 1920-21, or may the retirement board retire such teachers soon after the beginning of the school year 1920-21 or at any time during the year?”

3. In case such teachers may be retired before the close of the year 1920-21, will the payment of pension to such teacher begin upon retirement or at the close of the year?”

4. May teachers over sixty years of age who have taught prior to September 1, 1920, be retired during the year 1920-21 and when will payment of pension begin?”

Section 7896-50 G. C. 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.”

A reading of the above section indicates that it is the intent of the law that every teacher, in order to have the benefits of the teachers' retirement system, must have an employer, for in other sections of the teachers retirement law it is provided that portions of the funds necessary for the operation of the law must come from employers as well as teachers.

Section 7896-22 reads in part as follows:

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

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

(b) All teachers who became teachers or who were reappointed as teachers after the first day of September, nineteen hundred and twenty, except teachers who are excluded by the provisions of this act.

(c) (Refers to teachers in colleges and institutions which later join the teachers retirement system).

(d) (Refers to teachers who become contributors at a later period, that is, by the operation of a local district pension system merging as a whole with the state pension system.)”

Bearing upon the teachers you have in mind, that is, those in the public schools, who are over seventy years of age prior to September 1, 1920, it is therefore apparent that such teachers must be employed during the school year 1920-21, if not for all of such school year. Thus the teacher over seventy years of age, as indicated in your first question, would have to be in service, that is, employed by a board of education, on the first day of the school year beginning on September 1, 1920, or, if not employed at that time, such teacher can be re-appointed as a teacher after the first day of September, 1920, and at any time during that school year, and thus *become a member* of the state retirement system, under the provisions of section 7896-50 G. C. (employment by a board of education.) If such teacher over seventy years of age had not taught during the school year of 1919-1920, in order to have the status of a “*present teacher*” such teacher would have to be in the service of a board of education on the first day of the school term beginning in the school year starting September 1, 1920; but if such teacher over seventy years of age had been employed during the school year of 1919-1920, such teacher could still have the status of “*present teacher*” by being employed at a day later than September 1, 1920, provided the date of his first service as a teacher after September 1, 1920, was within one year after his last day of service prior to said first day of September, 1920. A teacher who does not have the status of “*present teacher*,” as defined in section 7896-1 G. C., shall be known as a “*new entrant*.”

In your second question you desire to know whether teachers over seventy years of age, prior to September 1, 1920, must be in service the entire school year of 1920-21, in order to become members of the state retirement system, and, as indicated in the answer to your first question, such teachers could enter after September 1, 1920, as indicated in this language appearing in section 7896-22:

“(b) All teachers who become teachers or who were re-appointed teachers after the first day of September * * *.”

There might be cases in which the teacher over seventy years of age became a member after September 1, and if such is the case during the school year of 1920-21, section 7896-34 provides that at the end of the school year in which they become members, the retirement board shall retire all teachers who are over seventy years of age at the time they become members. But, as indicated, this retirement cannot come until the end of the school year, that is, August 31, 1921. The state retirement board is without authority to retire any teachers soon after the beginning of the school year 1920-21, or at any time during such school year, for the law provides in various sections that the retirement of teachers eligible to retirement shall be effective as of the end of the school year then current.

In your third question you desire to know whether pension to teachers over seventy years of age would begin upon retirement or at the close of the year, and the answer to this appears in section 7896-34, that the retirement shall be at the end of the school year for those who are over seventy years of age at the time they become members, that is, the retirement takes place on August 31st of any school year and therefore the retirement day is the same day as the close of the year, and pension could not start on any day prior to the end of the school year.

In your fourth question you desire to know if teachers over sixty years of age, who have taught prior to September 1, 1920, could be retired during the year 1920-21, and when will payment of pension begin?

The answer to this appears in section 7896-34, which reads in part as follows:

"Any teacher, except a 'new entrant,' with less than five years of service, who has attained sixty years of age, may retire, if a member, by filing with the retirement board an application for retirement. The filing of such application shall retire such member as of the end of the school year then current."

The above quotation from the law means that teachers, over sixty years of age, may file an application for retirement during the school year of 1920-21, but if such retirement is granted by the state retirement board, it is not effective until the end of the school year then current, that is, August 31, 1921, and, as indicated heretofore, pension follows retirement and cannot precede retirement. Such applications for retirement could well be considered during the school year 1920-21 by the state retirement board in its duties of collecting evidence and verifying records, but the retirement itself and the beginning of any pension upon such retirement, would not operate until August 31, 1921.

In reply to your questions as submitted, and based upon the provisions of the teachers' retirement act, it is therefore the opinion of this department that:

1. Under the provisions of section 7896-50 G. C., the names of all teachers to whom the teachers' retirement act applies, must be certified by the employer to the state retirement board, and teachers over seventy years of age prior to September 1, 1920, must be re-employed or re-appointed during the school year 1920-1921, in order to become members of the retirement system.

2. The state retirement board is without authority to retire any teacher soon after the beginning of the school year, 1920-21, or at any time during such school year, for the law provides in various sections that the retirement of teachers eligible to retirement shall be effective as of the end of the school year then current.

3. Retirement of teachers over seventy years of age takes place on August 31st of the school year in which they become members, and the state retirement board shall automatically retire all other teachers who are members at the end of the school year in which the age of seventy is attained. Pension to any teacher could not start on any day prior to the end of the school year in which such teacher was retired.

4. Teachers over sixty years of age who have taught prior to September 1, 1920, and are members of the state teachers' retirement system during the school year 1920-21, may retire by filing with the retirement board an application for retirement in accordance with the provisions of section 7896-34 G. C., but retirement and pension would not be effective if granted by the state retirement board until the end of the school year then current.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1201.

APPROVAL; FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
CHAMPAIGN AND MEDINA COUNTIES.

COLUMBUS, OHIO, May 3, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*