

7476

DISTRIBUTION OF COSTS AND LIABILITIES—STATE RETIREMENT SYSTEMS—JOINT SERVICE CREDIT AND CONTRIBUTION IN TWO OR MORE SYSTEMS.

SYLLABUS:

Distribution of costs and liabilities among the public employees, school employees, and state teachers retirement systems, in retirement cases involving joint service credit and contributions in two or more systems, discussed.

Columbus, Ohio, December 1, 1956

Hon. Ward Ashman, Executive Secretary  
School Employees Retirement System  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“This request for your opinion is on behalf of the Public Employees, State Teachers, and School Employees Retirement Systems. The question involves the distribution of liability in cases of joint service credit and contributions in two or more systems in determining each system’s portion of superannuation, commuted superannuation, or disability retirement allowances.

“Sections 145.37, 3307.41, and 3309.35, Revised Code, are substantially the same and in the respective retirement acts provide for coordination among the systems when a public employee has membership in more than one system. Briefly, these sections provide: 1. that at the option of the member or beneficiary contributions and service credit in all systems shall be used in determining eligibility and total retirement allowance; 2. total service credit shall include total credit in all the systems; 3. the cost of the ‘basic annual pension’ and the ‘minimum allowance’ shall be shared on the basis of service credit, however, in section 3307.41 (State Teachers Retirement Act) ‘minimum allowance’ is not mentioned in the sharing section; 4. determination of ‘final average salary;’ 5. payment of each system’s portion; 6. that the retirement boards shall decide any and all problems arising in connection therewith and their decisions shall be final.

“The same superannuation retirement allowance formula is found in sections 145.33, 3307.38 and 3309.36, Revised Code, for

the three systems. Likewise, sections 145.34, 3307.40, and 3309.38, Revised Code, provide the same commuted superannuation allowance formula. Both of these formulas provide an allowance composed of: 1. an annuity; 2. a matching pension; 3. a prior service pension; 4. a basic annual pension; 5. a minimum allowance if the member qualifies for it which together with the annuity and pensions will provide a total allowance based upon age, service credit, and final average salary.

“The disability retirement allowance formula is found in sections 145.36, 3307.43, and 3309.40, Revised Code, for the three systems and provides for an allowance composed of: 1. an annuity and; 2. a pension, which together with the annuity will provide a total allowance based upon age, service credit, assumed service, and final average salary.

“In the determination of these retirement allowances in joint cases, the provisions of the retirement formula sections have been used where not specifically provided for in the coordination sections. As a result, the retirement boards have entered into agreements whereby the annuity, matching annuity, and prior service allowance are determined by each system based upon contributions and service credit in that system; and the ‘basic annual pension’ and ‘minimum allowance,’ and the disability pension, where payable, are shared by each system on the basis of service credit.

“This procedure has made for a tremendous load of detail among the systems in determining allowances and the proportionate share of cost.

“To eliminate some of the detail work thereby providing better service to members retiring on joint allowances, with very little variance in the share of overall costs over a period of years, the following plan or formula has been suggested.

“If a member retires and elects to use total contributions and service credit in all state retirement systems in determining the superannuation, commuted superannuation, or disability retirement allowances, and: 1. if the member qualifies for either or both ‘basic annual pension’ and the ‘minimum allowance’ in divisions (D) and (E) of the superannuation or commuted superannuation sections or; 2. if the member qualifies for a disability retirement allowance, then the total liability shall be shared by each system upon the basis of service credit.

“Enclosed is an example of a joint retirement case involving the Public Employees and School Employees Retirement Systems showing each system’s share of the total retirement allowance under the present procedure and in the recommended procedure outlined in the paragraph next above.

"Your opinion is requested as to the right of the retirement boards under the respective coordination sections to enter into agreements among the systems to share costs under the plan or formula outlined in the paragraph next above."

The example which was attached to your letter of request is as follows:

SUPERANNUATION RETIREMENT CASE INVOLVING  
MERGER OF CONTRIBUTIONS AND SERVICE  
CREDIT IN PERS AND SERS  
SERS No. S-4960

SERVICE CREDIT .....	SERS— 9.426 Years — 56.15%	
	PERS— 7.360 Years — 43.85%	
	<hr style="width: 50%; margin: 0 auto;"/>	<hr style="width: 50%; margin: 0 auto;"/>
	16.786 Years	—100.00%

TOTAL ALLOWANCE DETERMINATION

The lesser of:

$\$63. \times 16.786$  (Service)  $\times .91$  (Age Factor)— $\$962.34$  (Annual) or  $\$80.20$  (Monthly)

\* \* \* \* \*

	SERS	PERS	TOTAL
			<hr style="width: 50%; margin: 0 auto;"/>
<b>PRESENT PROCEDURE</b>			
Member's Annuity and			
Matching Pension . . . .	\$29.52	\$11.76	\$41.28
Prior Service Allowance . . . .	—0—	1.79	1.79
Basic Annual Pension . . . . .	8.42 (56.15%)	6.58 (43.85%)	15.00 (100%)
Minimum Pension . . . . .	12.43 (56.15%)	9.70 (43.85%)	22.13
	<hr style="width: 50%; margin: 0 auto;"/>	<hr style="width: 50%; margin: 0 auto;"/>	<hr style="width: 50%; margin: 0 auto;"/>
	\$50.37 (62.80%)	\$29.83 (37.20%)	\$80.20 (100%)

RECOMMENDED PROCEDURE

	SERS	PERS	TOTAL
			<hr style="width: 50%; margin: 0 auto;"/>
Total Allowance . . . .	\$45.03 (56.15%)	\$35.17 (43.85%)	\$80.20 (100%)

Under the recommended procedure, each system would proceed with its internal accounting after the total service credit and the total allowance is determined.

Although the problem appears somewhat complicated at first glance, I believe that if all the material code sections are analyzed it becomes apparent that the procedure presently being followed by and among the state retirement systems is the proper statutory way to compute a retirement allowance where the member has credit and service in more than one retirement system.

A given individual might have service credit in all three retirement systems and yet not enough credit in any *one* system, standing alone, to be eligible for a pension. The legislature, by enacting Sections 145.37, 3307.41 and 3309.35, Revised Code, has coordinated and integrated membership in the three systems for purposes of determining the *eligibility* and *total retirement allowance* for the purpose of superannuation, disability retirement, and other benefits. Resort must still be had to the appropriate code sections for the purpose of computing the various items which, taken together, comprise the retirement allowance.

For example, Section 3309.36, Revised Code, of the School Employees Retirement Act, provides as follows:

“\* \* \* Upon superannuation retirement, on and after June 30, 1955, an employee *shall be granted a retirement allowance consisting of:*

“(A) An annuity having a reserve equal to the amount of the employee’s accumulated contributions at that time;

“(B) A pension of equivalent amount;

“(C) An additional pension of forty dollars multiplied by the number of years of such prior service credit;

“(D) For members retiring prior to October 1, 1956, and for those who terminate contributions as an employee prior to October 1, 1956 and retire thereafter, a basic annual pension equal to one hundred eighty dollars for employees with ten or more years of total service credit except that such basic annual pension shall not exceed the sum of the total annual benefits provided by divisions (A), (B), and (C) of this section. The cost of such basic annual pension shall be included in the normal contribution rate provided in sections 3309.48 and 3309.49 of the Revised Code.

“(E) When a member retires on superannuation retirement, with three or more years of total service credit within the ten years immediately prior to retirement, *and his allowance when computed as an annual single lifetime allowance as provided in divisions (A), (B), (C), and (D) of this section and section 3309.38, respectively, of the Revised Code, based upon attained age sixty-five or forty years of total service credit, is less than the greater of the amounts determined by multiplying his total service credit by sixty-three dollars, or by one and one-half per cent of his final average salary, then the allowance shall be increased to such greater amount. \* \* \**” (Emphasis added.)

Substantially identical sections appear in the laws governing the other two retirement systems. See Sections 145.33 and 307.38, Revised Code.

As I understand your letter, the systems, in a joint retirement case, have proceeded to determine the service credit in each system. Likewise, the member's *annuity* and *matching* pension is calculated separately by each system, which items, of course, are based upon the total contributions of the member at the time, to the system in question. It will be noted that the pertinent code sections all provide that the employee "*shall* be granted a retirement allowance consisting of" the items already recounted.

If the member's allowance, when computed as an annual single life-time allowance as provided in divisions (A), (B), (C), and (D) of Section 3309.36, *supra*, is less than an amount equal to sixty-three dollars times the total service credit, then the allowance shall be increased to the latter amount. This is the so-called "minimum benefit" which was written into the three retirement acts by the 101st General Assembly. See Amended House Bill No. 744.

The important point to bear in mind is that the superannuate is to be granted a retirement allowance which consists of possibly *four* or five single items. In the ordinary case it is undoubtedly true that the annuity, matching pension, prior service allowance, and basic annual pension items will not equal the "minimum benefit," which item, of course, is determined, as has already been demonstrated, by a formula based upon multiplying years times dollars. Nevertheless, if the member qualifies for the "minimum benefit" he is not receiving that single item as his retirement allowance, but rather, an annuity, a matching pension, prior service allowance, if the member qualifies, a basic annual pension, *plus* whatever amount is necessary to bring the annual allowance as thus computed up to an amount determined by multiplying the member's total service credit by sixty-three dollars.

Hence, the allowance as computed under divisions (A), (B), (C), and (D) is increased, rather than substituting an entirely new and independent benefit or allowance for the allowance already computed as outlined above.

All of this assumes added importance where an individual has service in two or more retirement systems and elects to combine his credit for purposes of retiring. Under the "recommended procedure" as set forth in the example attached to your letter, the only mathematical calculations would be: "a." a determination of total credit in all the systems; "b." a calculation of what percentage of that credit was earned with each system

involved; "c." an apportioning among the systems on the basis of calculation, "b." of the amount determined by multiplying sixty-three dollars by the number of years service credit as determined in calculation "a". To be sure, such a procedure recommends itself from the standpoint of simplifying the mathematical calculations to be made by each system, but, in my opinion it cannot be utilized for the reason that the retirement acts as presently worded, do not permit it.

Although the retired *member* receives the same amount as a retirement allowance, by whichever of the two procedures is employed, one of the retirement systems, under the "recommended procedure" will assume an additional liability, which, in my opinion is illegal. For example, under the present procedure, in the case set forth in your example, the school employees retirement system pay 62.8% of the \$80.20 allowance, and the public employees retirement system pays 37.2% of the total amount. Under the new procedure, the school employees' share is reduced to 56.15% and the public employees' share is increased to 43.85%.

What happens under the "recommended procedure" is that it attempts to mix that which can't be mixed. The member's *annuity* and *matching pension* are based upon the contributions which the member makes to the proper system, which, in turn, are based upon his salary. The salary earned by the superannuate over the years, in his various capacities of public employment, will vary. Therefore, the contributions to each system will vary. Under the "recommended procedure" and your example, it is obvious that the public employees retirement system would, in effect, be **absorbing part of the annuity and matching pension** which properly is an obligation of the school employees retirement system.

I cannot see where the respective "coordination sections" of the retirement acts would, in any way, authorize the three retirement boards to shift to the "recommended procedure" as outlined in your letter.

Section 3309.35, Revised Code, is the coordination section of the school employees act, and it provides in material part as follows:

"For the purpose of further co-ordinating and integrating membership in the public employees retirement system and the state teachers retirement system with membership in the school employees retirement system for the purposes of retirement, the following provisions apply:

“(B) At the option of a member, or of a beneficiary as provided in sections 3309.44 and 3309.45 of the Revised Code, total contributions and service credit in all state retirement systems *shall be used in determining the eligibility and total retirement allowance* for the purpose of superannuation.

“(3) The cost of the ‘basic annual pension’ and the ‘minimum allowance’ shall be shared by all systems but such ‘basic annual pension’ shall not exceed one hundred eighty dollars and the portion payable by the school employees retirement system shall be an amount equal to the ratio that total service credit in such system bears to the total service credit in all the state retirement systems. \* \* \*” (Emphasis added.)

The procedure presently followed by the retirement systems conforms exactly to the law as quoted above. The coordination sections of the acts are for the benefit of the superannuate, and not for the convenience of the retirement systems, and I do not believe it can be urged that the coordination sections were intended to authorize the retirement boards indirectly to alter the respective sections governing the calculation of superannuation retirement allowances. There cannot be one retirement formula for employees who were members of just one system, and another for those employees who were members of two systems.

In passing, I should say that I am mindful of the last paragraph of Section 3309.35, Revised Code, which provides as follows:

“When a member or beneficiary elects to combine total contributions and service credit in all state retirement systems, the school employees retirement board, together with the other retirement boards, *shall decide any and all problems* arising in connection therewith and their decisions shall be final.”

(Emphasis added.)

This authority was never intended to extend a *carte blanche* to the three retirement boards in distributing liability among the systems in a joint retirement case. It will be noted that the boards are authorized only to “decide any and all *problems*” arising in connection with a joint retirement case. In the situation presented for my opinion there is no problem concerning distribution of liability. The three retirement acts make provision for the calculation of a superannuation pension, and those provisions must be followed. Each system, under the existing legislative scheme, must proceed with its own internal accounting, even in an instance where

a member is combining his service in two or more systems in order to qualify for retirement.

Respectfully,

C. WILLIAM O'NEILL

Attorney General