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POLICEMAN—RETIRED BEFORE SEPTEMBER 25, 1947—ENTITLED TO RECEIVE FROM AND AFTER OCTOBER 2, 1953, PENSION PROVIDED BY PARAGRAPH J, SECTION 741.49 RC—EMPLOYED AS DEPUTY SHERIFF SINCE 1953.

SYLLABUS:

A policeman who retired before September 25, 1947, is entitled to receive from and after October 2, 1953, the pension provided by paragraph (J) of Section 741.49, Revised Code, regardless of the fact that he has been employed since the last mentioned date as a deputy sheriff.

Columbus, Ohio, October 20, 1955

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your communication requesting my opinion and reading as follows:

“During the current examination of the accounts and records of the Police Relief and Pension Fund of the City of Dayton, our examiner encountered the following situation:

“A police sergeant, RKP. by name, retired on a policemen’s service pension on June 16, 1947. You will please note that this retirement was effective before the effective date of the new pension law, which I believe was September 27, 1947.

“It therefore appears that this police sergeant retired under the rules of the Police Relief and Pension Fund, *which were in effect on June 16, 1947.*

“Section No. II of the Rules and By-laws governing the Police Relief and Pension Fund of the City of Dayton on June 16, 1947, provides in part as follows: (See page 30, of the enclosed book of rules.)

‘In the event that such person accepts *any public employment*, or is elected to any public office, for which public employment or public office such beneficiary receives any fee, salary or other compensation whatsoever, then during the time such beneficiary is so employed or holding such elective office, *he shall not participate in the police relief and pension fund*, but on termination of such employment or the holding of such office, and upon proof satisfactory to this Board of Trustees of such termination, such beneficiary shall be restored to his full benefits under the police relief and pension fund originally allowed.’ (Emphasis added.)

“It appears from the records that retired Sergeant P. has been employed as a deputy sheriff by Montgomery County for some period of time during 1953 and 1954, and has at the same time drawn pension from the City of Dayton, Police Relief and Pension Fund, in the total amount of \$3,305.93, to the close of the year 1954.

“Our Examiner in Dayton, upon encountering this situation, made a finding against retired Sergeant P. in the amount of \$3,305.93, the amount of the pension payments, basing his finding upon the fact that Section No. 11 of the Rules of the Police Pension and Relief Fund of Dayton, in effect at the time of Mr. P.’s retirement, forbade him to draw such pension while holding any other public employment. * * *

“The questions that arise are these:

“(1) In the face of Section No. 11, of the Rules of the Police Relief and Pension Fund of Dayton, Ohio, which was in effect on June 16, 1947, the date of Sergeant P.’s retirement, can retired Sergeant P. accept employment as a deputy sheriff of Montgomery County, for which services he is compensated by Montgomery County, and at the same time draw his pension from the Police Relief and Pension Fund of the City of Dayton?

“(2) If not, is the finding for recovery made by our Examiner a valid finding, within the purview of the powers granted to the Bureau of Inspection and Supervision of Public Offices by Sections 117.01 to 117.19 of the Revised Code of Ohio?”

Effective September 25, 1947, the General Assembly made a sweeping revision of the laws relative to the police relief and pension fund.

Section 4628 of the General Code, as then enacted, now Section 741.49, Revised Code, established rules and regulations under which members of the fund were entitled to receive the stipulated pensions and allowances for disability. By the same act, the power formerly given to local pension boards to adopt rules determining the pensions to be allowed retiring police officers was withdrawn. Thereafter all such pensions and allowances were to be governed by the provisions of that section.

As then enacted, paragraph 9 of said Section 4628, together with a general provision which followed, read as follows:

“9. Every retired policeman, who has been receiving a pension prior to the effective date of this act, shall receive an annual pension payable in twelve monthly installments in an amount equal to twelve times the highest monthly pension granted such policeman by the trustees of the police relief and pension fund prior to said effective date, or twelve hundred dollars, whichever amount is the greater. There is hereby vested in every such policeman the right to be paid and to receive a pension in the amount fixed by this paragraph.

“No person shall be entitled to receive pension or disability payments pursuant to the provisions of this section while he is holding an elective or appointive full time salaried office or position in the service of the state or any political subdivision thereof.”

Paragraph 9 supra, became paragraph (J) of Section 741.49, Revised Code. By subsequent amendment effective October 2, 1953, 125 O. L., 44, the general provision above quoted, relative to holding another public office or position was eliminated.

Thus it will be seen that the legislature first established a certain policy to wit, that no pensioner could receive his pension while holding another public office or position, and later reversed that policy by removing the restriction.

The effect of the present law is to grant to a retired policeman who was receiving a pension prior to September 25, 1947, and without any restriction, the annual pension provided in paragraph (J), to wit, an amount equal to twelve times the highest monthly pension which had been granted such policeman by the local board prior to such date, or \$1200, whichever amount is the greater.

Accordingly, the pension that had been granted to the officer men-

tioned in your letter by his pension board, is supplanted by the pension provided by Section 741.49 (J), Revised Code, and the pension formerly granted by the board is a matter of interest only for the purpose of determining the amount which he will receive under the present law. In my opinion, the condition which was adopted by the rules of that board, in effect prior to September 25, 1947, can have no bearing upon the new pension created by the law, and inasmuch as there is no longer any statutory limitation on his right to receive his pension because of holding some other position, the rule of the board establishing that limitation is to be disregarded. There is therefore, no basis for a finding by your examiner for the recovery from such officer of the amount of the pension which he has received since October 2, 1953.

It is accordingly my opinion that a policeman who retired before September 25, 1947, is entitled to receive from and after October 2, 1953, the pension provided by paragraph (J) of Section 741.49, Revised Code, regardless of the fact that he has been employed since the last mentioned date as a deputy sheriff.

Respectfully,
C. WILLIAM O'NEILL
Attorney General