

the opinion that: (1) County commissioners, by virtue of Section 2419, General Code, have the authority to purchase for the sheriff and his deputies the uniforms required by Section 12616-2, General Code; (2) Township trustees have no authority to purchase for constables the uniforms required by Section 12616-2, General Code.

Respectfully

THOMAS J. HERBERT,  
*Attorney General.*

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1067.

STATE TEACHERS' RETIREMENT SYSTEM—APPLICATION  
FOR RETIREMENT—OPTION—NO PROVISION IN LAW  
FOR TEACHER IF HE DIES BEFORE END OF SCHOOL  
YEAR TO EXERCISE OPTION—SECTION 7896-42, G. C.

*SYLLABUS:*

*The law makes no provision whereby a teacher member of the State Teachers' Retirement System applying for retirement, may exercise the option spoken of in Section 7896-42, General Code, if he dies before the end of the school year in which he makes application for retirement.*

COLUMBUS, OHIO, August 19, 1939.

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

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

"Section 7896-42, G. C., provides that a teacher, upon retirement, may exercise certain options to take effect at the time of his retirement. In a certain case we have this year, a teacher who proposed to retire and who was very ill put in his application and exercised an option and died on May 12th. His widow now claims that the option must go into effect September first even though her husband died before the end of the year.

The specific question on which I should like your opinion is:

When can a teacher, applying for retirement, exercise an option so that the option will go into effect the following September first, even though the teacher may have died previous to that time?"

In 1919, the Legislature of Ohio, by act of the Assembly (108 O. L. Pt. I, p. 195) created what was termed in the act the "State Teachers Retirement System" to be administered by a board termed the "Retirement Board." The Act was codified as Sections 7896-1 to 7896-62, both inclusive, of the General Code of Ohio.

The object of the creation of the system was as stated in Section 7896-2, General Code as then enacted, that it was "established for the teachers of the public schools of the State of Ohio, which shall include the several funds created and placed under the management of a 'retirement board' for the payment of retirement allowances and other benefits under the provisions of this act." By the terms of the Act membership in the system was fixed and certain funds within the system created. Provision was made therein for each member to contribute regularly from his earnings a stated amount, the same to be deducted by the member's employer from the contributor's salary and transmitted by said employes to the retirement board to be credited when received by said board to the "Teachers' Savings Fund," an individual account being kept with each member showing the amount of his contributions and the interest accumulations thereon, the total of such member's contributions credited to the teachers' savings fund together with regular interest thereon being known as the member's "accumulated contributions."

Provision was also made in said act for the building up of other funds within the system for the purposes therein mentioned including expense of administration and the payment of retirement allowances or other benefits as provided in the act.

Retirement from the system calling for the right to retirement allowances under the law may be had by any member with five years of total service who has attained the age of sixty years. This is known as superannuation retirement and calls for the granting to a member so retiring an annuity having a reserve equal to the amount of the teacher's accumulated contributions at that time, a pension of equivalent amount and an additional pension of the retiring teacher if a "present teacher," equal to one and one-third percentum of his average final salary multiplied by the number of years of service certified in his prior-service certificate. Teachers who are members of the system and who have completed thirty-six years of total service may retire, regardless of age, on what is termed commuted superannuation allowances consisting of annuities, pensions and additional pensions the values of which are computed somewhat differently than are those mentioned for members who retire on superannuation allowances as noted above. Members who have attained the age of seventy years are automatically retired by the Retirement Board with allowances based on years of service, amount of accumulated contributions and average final salary, 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.

Provision is also made for the retirement of those disabled, with allowances based on conditions similar to those provided for other classes of retirements.

Members desiring to retire on either superannuation retirement or commuted superannuation retirement must file with the Retirement Board an application therefor. In each instance it is expressly provided by the pertinent statute that, "the filing of such application shall retire such member as of the end of the school year then current." See Sections 7896-34 and 7896-36, General Code. At the time of the enactment of the law in 1919, the school year as fixed by Section 7689, General Code, then in force, ended on August 31 of each calendar year and it is clear that the Legislature intended by the provisions of law quoted above that the filing of an application for retirement by a member of the Teachers Retirement System automatically retired the person making the application as of the end of the succeeding August 31st.

Provision is made in the act creating the Retirement System, by Section 7896-42, General Code, for the exercise by a beneficiary under the system of certain options with respect to the manner of the extension of benefits granted under the act. The term "beneficiary" as used in the act is defined in Section 7896-1, thereof, as follows:

"'Beneficiary' shall mean any person in receipt of a retirement allowance or other benefit provided by the act."

Said Section 7896-42, General Code, reads as follows:

"Until the first payment on account of any benefit is made, the beneficiary may elect to receive such benefit in a retirement allowance payable throughout life, or the beneficiary may then elect to receive the actuarial equivalent at that time of his annuity, his pension, or his retirement allowance, in a lesser annuity, or a lesser pension, or a lesser retirement allowance, payable throughout life with the provision that,

Option 1—

Upon his death, his annuity, his pension, or his retirement allowance, shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement.

Option 2—

Upon his death, one-half of his annuity, his pension, or his retirement allowance, shall be continued throughout the life of

such person, having an insurable interest in his life as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement.

Option 3—

Some other benefit or benefits shall be paid to the beneficiary or to such other person or persons as he shall nominate, provided such other benefit or benefits, together with such lesser annuity, or lesser pension, or lesser retirement allowance, shall be certified by the actuary engaged by the retirement board to be of equivalent actuarial value to his annuity, his pension or his retirement allowance, and shall be approved by the retirement board.”

Section 7896-41, General Code, provides as follows:

“Should a contributor die before retirement his accumulated contributions shall be paid to his estate or to such person as he shall have nominated by written designation duly executed and filed with the retirement board. If no legal representatives can be found, his accumulated contributions shall be forfeited to the retirement system and credited to the guarantee fund.”

Clearly, under the terms of Section 7896-42, General Code, *supra*, a beneficiary under the Teachers Retirement System has the unqualified right to make the election or, as you speak of it, “exercise the options” spoken of in the statute providing it is done before the first payment on account of the benefits to which he is entitled is made. Until a member becomes a beneficiary, he does not have that right. The question is therefore presented: When does he become a beneficiary? As defined in the act, a member does not become a beneficiary until he is in receipt of a retirement allowance or other benefit provided for in the act. In my opinion, he can not be said to be in receipt of a retirement allowance until he is retired, that is, after his retirement becomes effective. That brings us to the further question: When is he retired? Does the filing of an application for retirement constitute the retirement of the member, or does the retirement take place at the time fixed by the statute?

It seems to me the language of the statute, when it provides that the filing of an application for retirement shall retire the member as of “the end of the school year then current,” is so clear as to be susceptible of but one construction and that is that the retirement takes place at the end of the school year then current, just as the statute says. The mere filing of the application does nothing more than to bring into operation the provisions of the statute and fix the time of retirement.

It is a familiar principle of law so well established as to not merit

the citation of authority, that statutes the language of which is clear and unambiguous are not proper subjects for construction or interpretation. In other words, statutes the provisions of which either standing alone or when viewed in the light of other statutory provisions is *pari materia* are plain, clear and unambiguous mean what they say and should be administered accordingly.

As I view these statutes, their terms are not ambiguous. Clearly, by the language of Sections 7896-34 and 7896-36, General Code, the retirement of a member of the Teachers Retirement System does not take place until the end of the current year in which application is made for retirement or the end of the year in which the member becomes seventy years of age. Until that time, it can not be known definitely whether the member will ever be entitled to a retirement allowance as he may die before the end of the year, in which event under the clear and definite provisions of Section 7896-41, General Code, his accumulated contributions are to be paid to his estate or someone duly designated to receive them. The language of the statute last mentioned wherein it provides that "should a contributor die before retirement" his accumulated contributions shall be paid to his estate or someone duly designated to receive them, is capable in my opinion, of but one construction. There is nothing in the language or context of the statute or any other statute in *pari materia* which would justify us in saying that the word "retirement" as used in this statute means anything other than actual retirement. Certainly it can not be said to mean application for retirement.

It is equally clear under the terms of Section 7896-42, General Code, that no one but a "beneficiary" may make the election or exercise the option spoken of in that statute, and under the terms of Section 7896-1, General Code, wherein the term "beneficiary" as used in the act is defined, a member does not become a beneficiary until he is in receipt of a retirement allowance. Certainly he can not be said to be in receipt of a retirement allowance prior to his retirement. He is in receipt of a retirement allowance as soon as he has become entitled to it and no sooner, and this time is definitely fixed as being immediately after the end of the current year in which he makes his application for retirement or the end of the current year in which he becomes seventy years of age, as the case may be.

Being in receipt of a retirement allowance and receiving payments on account of such allowance are not to be confused. He may not receive a payment on account of the allowance until sometime after the allowance becomes effective. In the period between the time of his receipt of the allowance and the receipt of the first payment on account of the allowance he is extended the privilege of making the election spoken of in Section 7896-42, *supra*. I see no reason for saying that he may not signify in writing which option he desires to exercise at any time prior to the time of his retirement as well as later, and if he does not

change that election or withdraw it prior to the receipt of his first payment, it would carry over after the retirement and be fully effective. As a matter of practice, I assume that is often done. However, such an election made prior to retirement, could never become effective if death intervened before retirement and therefore before there existed a retirement allowance which is the very basis of the election.

In specific answer to your question I am of the opinion that the law makes no provision whereby a teacher applying for retirement may exercise the option spoken of in Section 7896-42, General Code, if he dies before the end of the school year in which he makes application for retirement.

Respectfully

THOMAS J. HERBERT,  
*Attorney General.*

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1068.

1. TAX—COUPON BOOKS OR TICKETS—WHERE SOLD TO STUDENTS—COLLEGE OR UNIVERSITY—COMPULSORY MATRICULATION FEE—PART OF EDUCATIONAL PROGRAM—NOT SUBJECT TO ADMISSION TAX.
2. WHERE PURCHASE VOLUNTARY—TICKETS SOLD TO STUDENTS, FACULTY MEMBERS AND OTHERS—SUBJECT TO ADMISSION TAX—SECTION 5544-3 G. C.

*SYLLABUS:*

*Coupon books or tickets which are sold only to students as part of a compulsory matriculation fee are part of the educational program of a college or university and are not classified as admissions which are subject to admission tax.*

*Student activity or season tickets which are sold to students, faculty members and others, the purchase being purely voluntary, are subject to the admission tax.*

COLUMBUS, OHIO, August 19, 1939.

HON. WILLIAM S. EVATT, *Commissioner, Department of Taxation, Columbus, Ohio.*

DEAR SIR: This will acknowledge the receipt of two letters in which you request my opinion on admission tax for college activities. Although both letters refer to attendance at college games, the method of selling tickets and the purpose of the tickets are not identical in both instances and I will discuss them separately by referring to the first letter with "Exhibit A", and the second letter with "Exhibit B".