

OPINION NO. 88-072**Syllabus:**

When the Public Employees Retirement System determines a combined retirement benefit pursuant to R.C. 145.37(B)(4), the System shall apply to all state retirement credit earned by the retirant only those benefit formulas set forth in R.C. Chapter 145.

To: William S. McLaughlin, Executive Director, Public Employees Retirement System of Ohio, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 13, 1988

I have before me your request for my opinion concerning the determination of retirement benefits when a person chooses to combine his service credits and contributions in all the state retirement systems and retire under one system. Under R.C. 145.37 a person who has been a member of more than one of the state retirement systems may combine all of his state retirement service credits and contributions. The system in which the person had the most credits must then determine and pay the person's retirement benefit. You ask whether the Public Employees Retirement System (PERS), as the paying retirement system, may determine a combined retirement benefit by applying each retirement system's benefit formula to the credits earned under that system.

R.C. 145.37, which provides for combining state retirement credit and contributions, states in pertinent part:

To coordinate and integrate membership in the state retirement systems, the following provisions apply:

(A) State retirement systems are the public employees retirement system, the state teachers retirement system, and the school employees retirement system.

(B) At the option of a member, total contributions and service credit in all state retirement systems shall be used in determining the eligibility and total retirement benefit payable. When total contributions and service credit are so combined, the following provisions apply:

....
 (2) "Total service credit" includes the total credit in all state retirement systems except that such credit shall not exceed one year for any period of twelve months.

....
 (4) *The state retirement system in which the member had the greatest service credit without adjustment, shall determine and pay the total retirement benefit. Where his credit is equal in two or more state retirement systems, the system having the largest total contributions of the member shall determine and pay the total retirement benefit.*

(5) In determining the total credit to be used in calculating the retirement benefit, credit shall not be reduced below that certified by the system or systems transferring credit, except that such total combined service credit shall not exceed one year of credit for any one "year" as defined in the law of the system making the calculation.

(6) The state retirement system determining and paying the retirement benefit shall receive from the other system or systems the member's refundable account at retirement plus an equal amount from the employer's accumulation fund.

(a) The annuity rates and mortality tables of the state retirement system making the calculation and paying the retirement allowance shall be exclusively applicable.

(b) Deposits made for the purpose of an additional annuity, and

including guaranteed interest, upon the request of the member, shall be transferred to the state retirement system paying the retirement benefit. The return upon such deposits shall be that offered by the state retirement system making the calculation and paying the retirement benefit. (Emphasis added.)

Thus, R.C. 145.37(B)(4) provides that the system in which the member had the most credit "shall determine and pay the total retirement benefit." Any credit earned by a retirant under another system is transferred to that paying system.

You ask whether the paying system may apply the transferring system's benefit formula to the credits earned under the transferring system. You indicate that this question arises because the PERS benefit formula differs from the State Teachers Retirement System (STRS) benefit formula. R.C. 145.33(A)(5), which governs PERS age and service retirement benefits, provides in pertinent part:

When a member retires on age and service retirement, his total annual single lifetime allowance...shall be not less than a base amount determined by multiplying his total Ohio service credit by the greater of eighty-six dollars or two and one-tenth per cent of his final average salary, which shall be adjusted by the factors of attained age or years of service....(Emphasis added.)¹

See also R.C. 145.33(B)(the PERS benefit formula for certain law enforcement officials' service retirement); R.C. 145.36 (the PERS benefit formula for disability retirement). STRS, on the other hand, uses a two per cent factor in calculating retirement benefits for its members. See R.C. 3307.38 (the STRS benefit formula for service retirement); R.C. 3307.43 (the STRS benefit formula for disability retirement). You ask whether PERS may apply the STRS benefit formula to credits earned under STRS when a person chooses to combine his credits in PERS and STRS and retire under PERS pursuant to R.C. 145.37.

R.C. 145.37(B)(4) does not explicitly state which system's benefit formula is to be used. For the following four reasons, I find it implicit that PERS, as the paying system, must apply its own benefit formula to all of the retirant's credit rather than separating the credits according to the systems in which they were earned. First, PERS is a statutory entity which must abide by its governing statutes. See generally *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947)(because a board of county commissioners is a creature of statute, it possesses only those powers conferred by statute). The governing statutes of PERS mandate a specific formula to calculate retirement benefits. See R.C. 145.33; R.C. 145.36. Therefore, PERS must abide by this formula for all retirants for whom PERS is the paying retirement system. Second, language elsewhere in R.C. 145.37(B) indicates that the General Assembly intended that the statutes of the paying system govern combined retirement benefits. See R.C. 145.37(B)(6)(a)(the annuity rates and morality tables of the paying system "shall be exclusively applicable"); R.C. 145.37(B)(6)(b)(the return upon deposits shall be that offered by the paying system).² Third, R.C. 145.37(B) requires that all retirement credit be combined into "the total credit." It is this "total credit" which is "to be used in calculating the retirement benefit." Thus, the language of R.C. 145.37

¹ Am. H.B. 760, 117th Gen. A. (1988) (eff., in part, Jan. 1, 1989) has amended R.C. 145.33(A). The amendment provides that a two and one-tenth per cent factor shall be applied to a member's first thirty years of service, and that a two and one-half per cent factor shall be applied to each subsequent year of service.

² It is understandable that R.C. 145.37(B) does not explicitly state which system's benefit formula is applicable, since the formulas were the same at the time R.C. 145.37 was enacted. See 1959 Ohio Laws 157 (Am. S.B. 160, eff. Aug. 1, 1959) at 171-73 (amending R.C. 145.33), 174-75 (enacting R.C. 145.36), 175-76 (enacting R.C. 145.37), 193-95 (amending R.C. 3307.38), 198-99 (amending R.C. 3307.43).

indicates that the retirement credit is to be combined into one unit, which is then used to calculate the retirement benefit. Fourth, other Revised Code sections in Chapter 145 indicate that PERS statutes are to govern combined retirement benefits paid by PERS pursuant to R.C. 145.37. See R.C. 145.321(F); R.C. 145.322; R.C. 145.3210. Therefore, I conclude that when PERS determines a combined retirement benefit pursuant to R.C.145.37, it must apply its own benefit formula to the total credit earned by a retirant. PERS is not authorized under R.C. 145.37 to determine a person's combined retirement benefit by applying the STRS benefit formula to those credits earned under STRS and the PERS benefit formula to those benefits earned under PERS.

Therefore, it is my opinion and you are advised that when the Public Employees Retirement System determines a combined retirement benefit pursuant to R.C. 145.37(B)(4), the System shall apply to all state retirement credit earned by the retirant only those benefit formulas set forth in R.C. Chapter 145.