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MEMBERS OF PUBLIC EMPLOYEES RETIREMENT BOARD—
ARE EMPLOYEES AND ARE COVERED BY THE WORK-
MEN'S COMPENSATION LAW—§4123.01, R.C.

SYLLABUS:

Members of the public employees retirement board, while acting as such, are "employees" within the meaning of Section 4123.01, Revised Code, and are covered by the provisions of Chapter 4123., Revised Code, the workmen's compensation law.

Columbus, Ohio, April 12, 1960

Hon. Fred L. Schneider, Executive Secretary
Public Employees Retirement System, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading :

"During recent months a considerable amount of discussion and concern has been had on the Workmen's Compensation status of members of the Retirement Board.

"At the regular monthly meeting of the Board on February 19, 1960, a motion was approved to request your opinion whether the members of the Public Retirement Board, while functioning as Board members, are covered by the Workmen's Compensation Act."

Section 145.04, Revised Code, contains the authority for a "public employees retirement board," reading as follows :

"The general administration and management of the public employees retirement system and the making effective of sections 145.01 to 145.57, inclusive, of the Revised Code, are hereby vested in a board to be known as the 'public employees retirement board,' which shall consist of seven members as follows :

"(A) The attorney general ;

"(B) The auditor of State ;

"(C) The director of state personnel ;

"(D) Four other members known as employee members, one of whom shall be a state employee member of the retirement system and who shall be elected by ballot by the state employee

members of the retirement system from among their number, another of whom shall be a county employee member of the system and who shall be elected by ballot by the county employee members of the system from among their number, another of whom shall be a municipal employee member of the system from among their number, and another of whom shall be a park district, conservancy district, health district, public library, township, or metropolitan housing authority employee member of the system and who shall be elected by ballot by the park district, conservancy district, health district, metropolitan housing authority, township, and public library employee members of the system from among their number, in a manner to be approved by the board.”

Under the provisions of Section 145.08, Revised Code, members of the board serve without compensation but are reimbursed for all actual necessary expenses.

Regarding workmen’s compensation coverage of public employees and officials, Section 4123.01, Revised Code, reads in part:

“* * *

“(A) ‘Employee,’ ‘workmen,’ or ‘operative’ means:

“(1) Every person in the service of the state, or of any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations, under any appointment or contract of hire, express or implied, oral or written, including any elected official of the state, or of any county, municipal corporation, or township, or members of boards of education;

“* * *”

Under this section, the attorney general and auditor of state, as elected officials, the director of state personnel as an appointed official, and the employee members as employees of the state, a county, a municipal corporation, or other subdivision are, in such capacities, “employees” within the purview of the workmen’s compensation law. Also, any assistant appointed by the attorney general, auditor of state or director of state personnel to represent him on the board would be an employee within the workmen’s compensation law. The question here to determine, however, is whether in serving on the public employees retirement board the members are such “employees.”

Section 4123.01, *supra*, includes under the coverage of the workmen’s compensation law every “person in the service of the state * * * under any

appointment or contract of hire, express or implied.” In this regard, it is clear that the members of the board are in the service of the state, as under Chapter 145., Revised Code, they are given many duties regarding the administration of the public employees retirement system. Further, regarding the employee members, it might be said that each represents his particular subdivision in his service on the board as well as all members of his class of employment, as such service deals with all employees under the system.

Certainly all members of the board are serving under color of some appointment; the offices of the elected and appointed officials, by statute, the employee members by ballot. Further, each member must meet the particular qualification of employment pertaining to his membership on the board. While members do serve without compensation, they are paid their actual expenses. Also, they are all paid by the state, a subdivision, or other agency of the state in the course of their regular employment, and under Section 145.08, Revised Code, members “shall suffer no loss because of absence from their regular employment.” Actually then, when serving on the board, members are paid by their regular employers.

In summary, I am of the opinion that, under the statutes, service on the board is a part of the regular employment of each member, including each employee member, and that each member is paid by his respective employer for such service. Since all members are covered by workmen’s compensation in their regular employment, it follows that they are covered when serving as members of the board.

Accordingly, it is my opinion and you are advised that members of the public employees retirement board, while acting as such, are “employees” within the meaning of Section 4123.01, Revised Code, and are covered by the provisions of Chapter 4123., Revised Code, the workmen’s compensation law.

Respectfully,

MARK McELROY

Attorney General