

OPINION NO. 76-075**Syllabus:**

1. R.C. 124.85, as enacted by Am. Sub. H.B. No. 268, (eff. 8-20-76, prohibits any person who is receiving a disability or retirement benefit from a state or municipal public retirement system, from being a member in another state or municipal public retirement system, but does not prohibit a member from continuing such membership if it was established prior to the effective date of the Act.

2. The prohibition in R.C. 124.85 against an individual becoming a member of a state or municipal public retirement system if he is receiving benefits under another system operates as an exception to the requirement in R.C. 3307.01 and R.C. 3307.51 that all teachers be members in the State Teachers Retirement System.

3. R.C. 124.85 does not prohibit an individual, who has established membership in more than one state or municipal public retirement systems, from either retiring on a joint

benefit basis by combining the accounts from each system or retiring independently from each system. However, such an individual can no longer retire from one system and continue membership in another.

To: James L. Sublett, Exec. Director, State Teachers Retirement System of Ohio, Columbus, Ohio
By: William J. Brown, Attorney General, November 10, 1976

I have before me your request for an opinion which reads as follows:

"An entirely new Section 124.85, Ohio Revised Code, relative to limitations on membership in a state or municipal public retirement system in Ohio, [became] effective on August 20, 1976, as included in Amended Substitute House Bill No. 268.

"I request a formal opinion of the Attorney General for interpretation of this section to clarify conflict of provisions for membership in the State Teachers Retirement System as covered in Sections 3307.01(B), 3307.41, and 3307.51, Ohio Revised Code, if Section 124.85 of the Revised Code is to be applied.

"The new Section 124.85 of the Revised Code reads as follows:

"No person who is receiving a disability benefit or service retirement pension or allowance from any state or municipal public retirement system in Ohio, shall be eligible for membership in any other state or municipal retirement system of this state. This section shall in no way affect the receipt of benefits by or eligibility for benefits of any person who is already receiving a disability benefit or service retirement pension or allowance for a state or municipal public retirement system in Ohio and is a member of any other state or municipal retirement system in this state on the effective date of this section."

"Several questions have developed as a result of this new legislation. Your opinion is requested in answer to the following:

"1. Does the exclusion from membership apply to initial membership, continuing membership or both?

"2. Since Section 3307.01(B) and 3307.51, Ohio Revised Code, mandate membership and retirement contributions, does ineligibility for membership in STRS, as designated in Section 124.85 of the Revised Code, also prohibit future employment in a position that would otherwise mandate contributions if the person had not retired?

"3. Current provisions of the Ohio Revised Code permit a person who has established membership in more than one Ohio retirement system (STRS, PERS, SERS) to choose one of the following:

"a. Retire on a joint benefit basis by combining the retirement accounts from each system.

"b. Retire independently from each system.

"c. Retire from one system and continue employment and benefit privileges in the second system.

"Does Section 124.85 of the Revised Code change the choices open to a person as outlined in a, b, and c above?"

"Public Employees Retirement System and School Employees Retirement System have similar provisions that appear to be in conflict with Section 124.85 of the Revised Code. . . ."

Your questions concerning the effects of the enactment of R.C. 124.85 will be addressed in the order in which they are presented in your letter.

Your first question is whether the exclusion from eligibility for membership provided by R.C. 124.85 applies to initial membership in a retirement system, continuing membership, or both.

The effect of the provisions of R.C. 124.85 on a person's eligibility for continuing membership depends upon whether he is currently receiving a disability benefit or service retirement pension from one of the state or municipal retirement systems. Under the language of the statute, the provisions of R.C. 124.85 have no effect upon the rights of persons who were receiving disability or service retirement benefits from one retirement system and had established membership in a different system prior to the effective date of the new section. Consequently, any person who was receiving retirement benefits from one system and who had established membership in another prior to August 20, 1976, may maintain his membership status unaffected by the provisions of R.C. 124.85.

Persons, however, who have retired from one retirement system but who have not established membership in another prior to August 20, 1976 are prohibited from doing so in the future by the new law. Also, in the future, persons who have maintained membership in more than one retirement system and who retire from one system are prohibited from maintaining their contributing membership in the other. Under the new law such persons are no longer "eligible for membership."

The second area of inquiry presented by your request concerns the potential conflict between the provisions of R.C. 3307.01(B), 3307.51, and 124.85. R.C. 3307.01(B) and 3307.51 require that persons holding certain teaching positions within Ohio be members of the State Teachers Retirement System. Since R.C. 124.85 prohibits persons who are receiving retirement benefits from one

system from being members of another, the question has arisen whether the combined effect of these statutes is to prohibit future employment in any position which would mandate membership in a retirement system if a person had not retired.

The basic rule of statutory construction concerning conflicts between general and special statutes is set forth in R.C. 1.51, which reads as follows:

"If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provisions prevail as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail."

The provisions of R.C. 1.51 provide a resolution to the problem presented by the conflicting provisions of R.C. 3307.01(B), 3307.51, and 124.85. R.C. 3307.01(B) and 3307.51 are general membership statutes mandating membership in and retirement contributions to the State Teachers Retirement System by all persons employed in the covered teaching positions. R.C. 124.85 is a very specific statute which applies only to persons who are receiving retirement benefits from one system and who are employed in a position where they would normally be required to be members of another system. Consequently, R.C. 124.85 operates as an exception to R.C. 3307.01(B) and 3307.51 insofar as the statutes are in conflict. Those persons receiving retirement benefits from one retirement system and holding positions which would normally require them to be members of another are excepted from general membership requirements by the provisions of R.C. 124.85. They are not however disqualified from employment in those positions.

The final question presented in your letter concerns the effect of R.C. 124.85 on several retirement options previously available to a person who had established membership in more than one of the Ohio retirement systems.

R.C. 124.85 will have no effect on a person's option to retire on a joint benefit basis by combining the retirement accounts from each system in which he is a member. Likewise, it will not prohibit a person from retiring independently from each system. Under the provisions of R.C. 124.85, however, a person will no longer be able to retire from one system and continue membership and benefit privileges in the second system. While an individual's retirement under one system will not disqualify him from employment in which he would normally be required to be a member of a second system, the provisions of R.C. 124.85 will prevent such an individual from either establishing membership in the second retirement system, or continuing to make required contributions subsequent to the date of his initial retirement.

In specific answer to your question it is my opinion and you are advised that:

1. R.C. 124.85, as enacted by Am. Sub. H.B. No. 268, (eff. 8-20-76) prohibits any person who is receiving a dis-

ability or retirement benefit from a state or municipal public retirement system, from being a member in another state or municipal public retirement system, but does not prohibit a member from continuing such membership if it was established prior to the effective date of the Act.

2. The prohibition in R.C. 124.85 against an individual becoming a member of a state or municipal public retirement system if he is receiving benefits under another system operates as an exception to the requirement in R.C. 3307.01 and R.C. 3307.51 that all teachers be members in the State Teachers Retirement System.

3. R.C. 124.85 does not prohibit an individual, who has established membership in more than one state or municipal public retirement systems, from either retiring on a joint benefit basis by combining the accounts from each system or retiring independently from each system. However, such an individual can no longer retire from one system and continue membership in another.