

**OPINION NO. 71-075****Syllabus:**

The term, "elected state officials", as used in Section 145.381 (A), Revised Code, applies to the Governor, the Lieutenant Governor, the Secretary of State, the Auditor of State, the Treasurer of State, the Attorney General, the members of the General Assembly, and the members of the Supreme Court, the Court of Appeals, the Court of Common Pleas, the Probate Court and the Juvenile Court.

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**To: Fred L. Schneider, Exec. Director, Public Employees Retirement System of Ohio, Columbus, Ohio**

**By: William J. Brown, Attorney General, November 11, 1971**

I am in receipt of your request for my opinion, which you state as follows:

"Does the term 'elected state officials', as used in Am. House Bill No. 349, effective September 14, 1970 and incorporated into Section 145.381, paragraph A, Revised Code of Ohio, apply to any elected officials other than those elected on a state-wide basis and/or elected to the General Assembly?"

The answer to this question involves an interpretation of Section 145.381, Revised Code, which reads, in pertinent part, as follows:

"A former member receiving a retirement allowance, other than a disability allowance, from this system, and hereafter referred to as a retirant, may be elected to an office of this state or any political subdivision or employed, anything contained in Chapter 145. of the Revised Code to the contrary notwithstanding, provided:

"(A) During an elective term of office, membership in the public employees retirement system

is not permitted, except that retirants elected to an office of the state who were elected state officials when they retired may elect to establish membership in the system or may elect to receive both the pension and the annuity portion of their retirement allowance and, if they so elect, may not establish membership in the system. If such an official elects to establish membership in the system, he shall be considered an employee as provided in division (C) of this section except that he need not have retired for at least eighteen months. For purposes of this section, except when he elects otherwise under this division, a retirant who is elected or appointed to an elective office of this state or any political subdivision is not considered employed, provided, the retirant who is reelected to the office which he previously held, shall be retired for not less than eighteen months. He shall continue to receive both the pension and the annuity portion of his retirement allowance while serving in an elective position."

Section 145.41, Revised Code, provides that a public employee, who has been a member of the Public Employees Retirement System, must give up membership when his public service terminates and he begins to receive his retirement allowance. Section 145.381 (A), supra, provides, in brief, that such a retirant, if thereafter elected to an office of the state or of any political subdivision, may not again become a member of the System. He will, of course, continue to receive the same retirement benefits as before, but he cannot rejoin the System in order to build up further benefits. There is, however, one exception. A member of the System who was an "elected state official" at the time he retired, and who thereafter again becomes an elected state official, has a choice. He may choose to resume his membership in the System, with the result that he will receive no more benefits until he again retires. Or he may choose not to resume membership, in which case he will continue to receive the same retirement benefits as he did before his election. Your question is, what is the coverage of the term, "elected state official"? The statute also uses the variant, "elected to an office of the state", but I think it clear that no distinction was intended.

Although Section 145.381 (A), supra, itself contains no definition of the term, the Constitution enumerates the legislative, executive and judicial officials of the State of Ohio, all of whom are, of course, elective. Article II, Section 1, Ohio Constitution, provides, in part, as follows:

"The legislative power of the state shall be vested in a general assembly consisting of a senate and a house of representatives\* \* \*."

Article III, Section 1, Ohio Constitution, provides, in part, as follows:

"The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, and an attorney general\* \* \*."

Article IV, Section 1, Ohio Constitution, provides as follows:

"The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, and such other courts inferior to the supreme court as may from time to time be established by law."

If all constitutional judges were to be considered "elected state officials", the number included in that classification would be considerable. However, the legislature, in enacting Chapter 141, Revised Code, Salaries of State Officers, used the term in a more restrictive sense, and limited the state judicial officers to the judges of the Supreme Court, the Court of Appeals, the Court of Common Pleas, the Probate Court, and the Juvenile Court. See Sections 141.04, 141.07, and 2151.07, Revised Code. We are dealing here with an exception to a general rule prohibiting renewed membership in the Public Employees Retirement System to a retired public employee who is elected to an office of the state, and it is a well-settled rule of statutory construction that "exceptions to a general rule are not favored and must be strictly construed". Linen Supply Co. v. Evatt, 146 Ohio St. 248, 251 (1946); see, also, State, ex rel. v. Forney, 108 Ohio St. 463, 467 (1923). In view of this, I think that the term, "elected state officials", in Section 145.381 (A), supra, should be interpreted in the more restrictive manner in which it was used by the General Assembly in Chapter 141, supra.

In specific answer to your question it is my opinion and you are so advised that the term, "elected state officials", as used in Section 145.381 (A), Revised Code, applies to the Governor, the Lieutenant Governor, the Secretary of State, the Auditor of State, the Treasurer of State, the Attorney General, the members of the General Assembly, and the members of the Supreme Court, the Court of Appeals, the Court of Common Pleas, the Probate Court and the Juvenile Court.