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1. SALARY AND WAGE ADJUSTMENT—AMENDED SENATE BILL NO. 1, 96 GENERAL ASSEMBLY—STATE EMPLOYE IN COMPUTING ADDITIONAL TWO PER CENT SALARY INCREASE SHALL BE GIVEN CREDIT FOR ALL PRIOR STATE SERVICE.

2. COMPUTATION, PRIOR SERVICE CREDIT OF PRESENT STATE EMPLOYE—IN SERVICE OF STATE FOR ONE OR MORE PERIODS OF TIME PRECEDING TIME DURING WHICH HE IS PRESENTLY EMPLOYED—ONLY FRACTIONAL PART ENDING DECEMBER 31 OF FIRST CALENDAR YEAR OF FIRST PERIOD OF EMPLOYMENT MAY BE CONSIDERED AS FULL CALENDAR YEAR.

3. ANY PERIOD OF TIME, ONE YEAR OR LESS, WHEN EMPLOYE IN STATE CLASSIFIED CIVIL SERVICE WAS ON LEAVE OF ABSENCE, SHOULD BE INCLUDED TO DETERMINE PRIOR SERVICE CREDIT TO WHICH EMPLOYE ENTITLED.

SYLLABUS:

1. A state employe within the meaning of the salary and wage adjustment provisions of Amended Senate Bill No. 1 of the 96th General Assembly, shall, in computing the additional two per cent salary increase prescribed therein, be given credit for all prior state service whether or not such prior state service is of such a character so as to preclude a person presently engaged therein from receiving the increases prescribed in said salary and wage adjustment provisions.

2. In computing the prior service credit of a present state employe who was in the service of the state for one or more periods of time preceding the period of time during which he is presently employed, only the fractional part ending December 31 of the first calendar year of his first period of employment may be considered as a full calendar year.

3. Any period of time of one year or less during which an employe of the state in the classified civil service was on a leave of absence should be included in determining the prior service credit to which such employe is entitled under paragraph (b) of the salary and wage adjustment provisions of Amended Senate Bill No. 1 of the 96th General Assembly.

Columbus, Ohio, February 10, 1945

Miss Gertrude Jones, Chairman, The State Civil Service Commission of Ohio
Columbus, Ohio

Dear Miss Jones:

This will acknowledge receipt of your recent communication, which reads as follows:

> "The State Civil Service Commission respectfully requests your opinion on the three following questions:
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> 1. Is a person who is in the state service at the present time entitled to receive prior service credit for such years as he served in a position which, as specifically mentioned under the provisions of Senate Bill No. 1, has been excluded from the benefits of the act?
>
> 2. In computing prior service credit shall this Commission give an employee credit for more than one partial year under that part of Senate Bill No. 1 which reads as follows: 'If such employee entered into the state service at any other time than the beginning of the calendar year, the remaining portion of the calendar year during which such employee entered the state service shall be considered a full calendar year for the purposes thereof.'
>
> 3. Shall an employee be given prior service credit for a year in which such employee was on leave of absence?"

Pertinent to your inquiry is the language contained in paragraph (b) of the salary and wage adjustment provisions of Amended Senate Bill No. 1 of the 96th General Assembly. Said paragraph, in so far as the same is material, reads:

> "(b) In addition to the above there is herein provided a ten per cent (10%) increase on the base salary of all state employes not herein specifically excluded, plus two per cent (2%) of such base salary for each full calendar year such state employe has been in the state service prior to the effective date of this act, or shall be subsequent thereto, not to exceed five (5) years (not to exceed a maximum of ten per cent). If such employe entered the state service at any other time than the beginning of the calendar year, the remaining portion of the calendar year during which such employe entered the state service shall be considered a full calendar year for the purposes hereof."

The terms "state employe" and "base salary", as the same appear in the above paragraph, are defined in the act as follows:

> "(1) The words 'state employe' shall mean and include all officers and employes of the State of Ohio now or hereafter on the state payroll not herein specifically excepted.
>
> (2) The words 'base salary' shall mean the base salary or wage received by an employe on June 24, 1943, or on the date of his appointment if subsequent thereto, but shall not include compensation allowed or paid as maintenance."

It will be noted from the above that for the purpose of said salary and wage adjustment provisions, a state employe is an officer or employe who was *on the effective date of the act or thereafter* on the state payroll, and who is not specifically excepted in the act.

It is likewise noteworthy that paragraph (b) provides that each state employe shall receive two percent of his base salary for each full calendar year such state employe has been in the *state service.* In other words, the base upon which such additional two percent is computed is "state service" and not service as a "state employe".

An examination of paragraph (c) of said salary and wage adjustment provisions discloses that the specific exceptions referred to in the language defining a state employe embrace elective officials, legislative employes, officers and enlisted men in the National Guard, directors of departments and chiefs of divisions, employes in the state universities, and members and certain employes of particular boards, bureaus and commissions. In all cases the persons holding the offices and positions excepted are in the "state service."

It must be presumed that the General Assembly, after having defined the term "state employe" and then having used such term repeatedly throughout the act, certainly intended the words "state service" to be given a different meaning than that ascribed by it to "state employe".

Furthermore, since the words "state employe", as used in the act, were not given their meaning by the General Assembly until the act became effective and the state service for which credit is to be given in the instant case was rendered prior to the effective date of the act, it can scarcely be contended that the General Assembly intended that a person

who now falls within the definition of a state employe must have rendered state service as such in order to be entitled to the two percent increase prescribed in the act. Had that body so intended, it might very easily have said so by inserting after the term "state service" in paragraph (b), the words "as a state employe". Having failed to place such limitation therein, I find myself constrained to the view that any state service rendered prior to the effective date of the act, by a person who is now a state employe within the meaning of the act, must be considered in determining prior service in accordance with the act, whether or not such prior state service is of such a character so as to preclude a person presently engaged therein from receiving the increases provided in the act by reason of the specific exceptions contained in paragraph (c) thereof.

I come now to your second question.

In regard thereto, it will be observed that paragraph (b) provides:

> "If such employe entered the state service at any other time than the beginning of the calendar year, the remaining portion of the calendar year during which such employe entered the state service shall be considered a full calendar year for the purposes hereof."

While the above language is not clear in its meaning, it can scarcely be urged that the General Assembly intended every fractional part of a calendar year ending on December 31 that a person was in the state service should be considered as a full year. If such were the case, a state employe who was engaged in temporary seasonal work from December 1 until December 31 of each year would after actually working only five months be given credit for five full years. This, of course, would be an absurdity.

In 37 O. Jur., page 644, it is said:

> "One of the established rules for the construction of statutes is that doubtful provisions should, if possible, be given a reasonable, rational, sensible, or intelligent construction. Accordingly, it is the duty of the courts, if the language of a statute fairly permits, or unless restrained by the clear language of the statute, so to construe it as to avoid unreasonable, absurd, or ridiculous consequences. Accordingly, in interpreting an ambiguous statute, the reasonableness or otherwise of one construction or the other is a matter competent for consideration."

It seems to me that if a reasonable and sensible interpretation is given to the above provisions, it could properly be concluded that only the remaining portion of the calendar year during which an employe first entered the state service may be considered a full calendar year, for the purposes of the act. In other words, if a person who is presently a state employe was in the state service for one or more periods of time preceding the period of time during which he is presently employed, only the remaining portion of the first year of his first period of employment may be considered as a full calendar year.

The language in question, in my opinion, is fairly susceptible of such construction, since it can very well be said that a person can enter the state service but once, and that when after leaving the state service he again comes back into the same, he *reenters* such service. In view of this, I am impelled to the above conclusion.

Your third question is answered by a former opinion of this office rendered by the then Attorney General on June 3, 1918 (Opinions of the Attorney General for 1918, page 778), wherein it was held:

> "A leave of absence from duty by an employe in the state civil service, either with or without pay, is not a separation from the service within the meaning of Section 486-16, G. C."

Similarly, in the case of Hartman v. Braucher, et al., 32 O. C. A., 497, it was held by the Court of Appeals of Stark County:

> "The limitation of one year specified in Section 486-16, G. C., clearly defines the period for which a leave of absence may be granted, and any leave of absence granted in excess of such period constitutes an actual separation from the service."

Therefore, since an employe who was on a leave of absence for one year or less was not separated from the service of the state during the period of such leave of absence, it would follow that such employe should be given prior service credit for the period during which he was on such leave of absence.

Specifically answering, then, your three questions, you are advised that in my opinion:

1. A state employe within the meaning of the salary and wage adjustment provisions of Amended Senate Bill No. 1 of the 96th General

Assembly, shall, in computing the additional two percent salary increase prescribed therein, be given credit for all prior state service whether or not such prior state service is of such a character so as to preclude a person presently engaged therein from receiving the increases prescribed in said salary and wage adjustment provisions.

2. In computing the prior service credit of a present state employe who was in the service of the state for one or more periods of time preceding the period of time during which he is presently employed, only the fractional part ending December 31 of the first calendar year of his first period of employment may be considered as a full calendar year.

3. Any period of time of one year or less during which an employe of the state in the classified civil service was on a leave of absence should be included in determining the prior service credit to which such employe is entitled under paragraph (b) of the salary and wage adjustment provisions of Amended Senate Bill No. 1 of the 96th General Assembly.

Respectfully,

HUGH S. JENKINS

Attorney General