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SYLLABUS:

A fireman who has elected (pursuant to Section 4614-1, General Code) to be covered by the rules of the Firemen's Relief and Pension Fund in effect on April 1, 1947 and who later voluntarily ceases to be a "member of the fund", other than by retiring or through disability, loses all rights to any benefits from that fund. Upon being re-employed as "member of the department" such fireman must qualify for benefits under the terms of the pension plan applicable to the period of his re-employment.

Columbus Ohio, December 10, 1963

Hon. James A. Berry
Prosecuting Attorney
Clark County
Springfield, Ohio

Dear Sir:

I have before me your request for my opinion in which you ask the following question:

“A person appointed to the Fire Department prior to September, 1947 would be governed by the pension plan in effect at that time. In September of 1947 a change

in requirements to earn a pension was enacted. This change raised the minimum requirements from twenty years to twenty-five years of service and fifty-two years of age. After this change became effective, two members of the Springfield Fire Department resigned their appointment, however, within the period of less than a year both men asked for and received a reinstatement to the department. In view of the above facts, what requirements are the two men to be governed by when they apply for a pension?"

From the above information supplied in your letter, I am making several basic assumptions.

First, I have assumed that the two men in question qualified as "members of the department" and "members of the fund" on September 25, 1947, the date when General Code Sections 4615-1 and 4612-4 (now Sections 741.01 and 741.18, Revised Code) became effective.

Section 741.01, Revised Code, provides:

"As used in sections 741.01 to 741.25, inclusive, of the Revised Code:

"(A) 'Member of the fire department' means any person who receives an original appointment as a fireman from a duly established civil service eligible list, or who is appointed to a position in a fire department pursuant to section 737.22 of the Revised Code, or who, on September 25, 1947, was contributing two per cent of his annual salary to a firemen's relief pension fund established pursuant to section 741.02 of the Revised Code.

"(B) 'Member of the fund' means any person who is contributing four per cent of his annual salary to the firemen's relief and pension fund established pursuant to section 741.02 of the Revised Code, or who is receiving a pension or disability benefits from such fund as a result of service in the fire department."

Section 741.18, Revised Code, provides:

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"Members of the fund who, on or after September 25, 1947, are granted pensions or disability benefits by the board are entitled to receive pensions and benefits as provided by divisions (A) to (E), inclusive, of this section. * * *

"(A) A member of the fund who has completed

twenty-five years of active service in the fire department and has attained fifty-two years of age may, at his election, retire from the fire department, * * *

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I have also assumed from your letter that the requirement for twenty years of service to earn a pension was the rule of the trustees of the Springfield Firemen's Relief and Pension Fund as of April 1, 1947. It might be pointed out that prior to September 25, 1947, the trustees of each firemen's pension fund in Ohio were empowered by statute (General Code, Section 4612) with the authority to adopt rules and regulations for the distribution of their particular fund. Section 741.18 Revised Code, was enacted to standardize the retirement and relief provisions of these funds and the statutory provisions became mandatory for all benefits and pensions to be granted after September 25, 1947.

The above facts being assumed, Section 4614-1, General Code, effective September 25, 1947, applied to the firemen in question.

Section 4614-1, General Code, provided:

“Persons who, on the effective date of this act, have been contributing two per cent of their annual salary to a firemen's relief and pension fund *may elect to receive benefits and pensions from said fund in accordance with the rules and regulations governing the granting of pensions and benefits therefrom in force on the first day of April, 1947.* Such election must be in writing and filed with the trustees of said fund *within sixty days after the effective date of this act.* Provided, however, such persons shall be required to contribute to the fund in the manner and in the amount provided for in section 4609 of the General Code.”

(Emphasis added)

Without an election under Section 4614-1, General Code, firemen are governed by the provisions of Section 741.18, Revised Code, (Section 4612-4, General Code), the new pension plan.

Assuming a proper election to be governed by the plan in force on April 1, 1947, was made, it must be determined whether the firemen involved lost their status as “members of the fund” as a result of their voluntary resignation from the fire department after the 1947 legislation became effective.

In Opinion No. 2765, Opinions of the Attorney General for 1948, it is said at page 94:

“I am further of the opinion that a fireman who has been separated from the service, either voluntarily or by reason of retrenchment or reduction in the fire force, does not during such separation, remain a ‘member of the fund.’ ”

I agree with the conclusion expressed in the above excerpt and believe that the two persons in question, having voluntarily resigned as firemen, lost their identity and status as members of the fund. Upon re-employment their status was that of a new employee for purposes pertinent to this opinion.

In answer to your question, it is my opinion that:

A fireman who has elected (pursuant to Section 4614-1, General Code) to be covered by the rules of the Firemen’s Relief and Pension Fund in effect on April 1, 1947 and who later voluntarily ceases to be a “member of the fund”, other than by retiring or through disability, loses all rights to any benefits from that fund. Upon being re-employed as “member of the department” such firemen must qualify for benefits under the terms of the pension plan applicable to the period of his re-employment.

Respectfully,
WILLIAM B. SAXBE
Attorney General