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PUBLIC EMPLOYEES RETIREMENT SYSTEM. DOES MEMBER WHO WITHDRAWS CONTRIBUTIONS AND THUS HAS FORFEITED ALL SERVICE CREDIT, REGAIN MILITARY SERVICE CREDIT AND RE-ESTABLISHED SERVICE CREDIT WHEN HE MAKES A RESTORATION PAYMENT—§145.31 R. C. OAG No. 6475—1956, PAGE 333

SYLLABUS:

A member of the public employees retirement system who, subsequent to June 29, 1955, makes a restoration payment pursuant to the provisions of Section 145.31, Revised Code, thereby restores all service credit to which he was formerly entitled, including prior service credit for services in the armed forces of the United States. (Opinion No. 6475, Opinions of the Attorney General for 1956, page 333, approved and followed).

Columbus, Ohio, June 29, 1960

Hon. Fred L. Schneider, Executive Secretary
Public Employees Retirement System
35 East Gay Street, Columbus, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“Prior to August 1, 1959, (the effective date of Amended Senate Bill 160) the third paragraph of Section 145.30 of the Revised Code provided that:

“A member of the public employees retirement system who returns to full time contributing membership in this system within two years of an honorable discharge and who

has previously forfeited service credit and annuity rights by a withdrawal of contributions upon becoming, or at any time during active service as, a member of the armed forces of the United States may restore the forfeited annuity rights and thereby become eligible for service credit for services with the armed forces of the United States as provided in this section provided he *restores to the employees' savings fund prior to November 30, 1953*, his accumulated contributions as they were at the time of withdrawal together with regular interest thereon from the date of withdrawal to the date of redeposit.' (Emphasis added by us)

"In drafting Senate Bill No. 160 three amendments were provided as concerns Section 145.30 Revised Code:

"No. 1 The first paragraph was deleted and incorporated in Section 145.29 (as the first two sentences).

"No. 2 Military credit up to ten years was provided, and

"No. 3 Believing the deadline date (November 30, 1953) formerly carried in the last sentence of Section 145.30 Revised Code for restoring a withdrawal of contributions was meaningless and in need of codification the date, November 30, 1953 was deleted.

"Mr. F, a member of the System has applied for retirement benefits. His record shows that subsequent to his military service he returned to service covered by the System. Then later he terminated public service and claimed a cash refund of contributions. Still later, but after November 30, 1953, he returned to System membership and after two years made a restoration payment (as provided in Section 145.31 Revised Code).

"We would appreciate your interpretation of the statute and answer to our specific question:

'Does a member who has withdrawn his contributions and thus has forfeited all service credit, regain military service credit in addition to his other re-established service credit when, after November 30, 1953 he makes a restoration payment as provided in Section 145.31 Revised Code?'

The last paragraph of Section 145.30, Revised Code, quoted in your request, as it read prior to its amendment in 1959 will not be recopied here. A reading of said paragraph indicates clearly that no action by any member of the Retirement System could have been taken pursuant to its provisions subsequent to November 30, 1953, although said provisions remained a part of Section 145.30, Revised Code, until that paragraph was deleted in its entirety by Amended Senate Bill No. 160 of the 103rd General Assembly.

I am informed that Mr. F., referred to in your letter, restored his account with the System in March of 1960 and therefore the above set forth portion of Section 145.30, Revised Code, as it formerly read could grant no right to him. Accordingly, we need only consider what rights he received under the provisions of Section 145.31, Revised Code, which reads as follows :

“A member or former member of this retirement system with at least two years of contributing service credit in this system, in the state teachers retirement system, or in the school employees retirement system subsequent to the withdrawal of contributions and cancellation of service credit in this system may restore such service credit by redepositing in the employees’ savings fund the amount withdrawn with interest at the rate to be credited to his accumulated contributions at retirement, compounded annually, from the first of the month of withdrawal to and including the month of redeposit, and by depositing in the employers’ accumulation fund one half of such amount so redeposited. The public employees retirement board shall have final authority to fix the amount and manner of such payment.

“No member shall take advantage of this provision for the restoration of membership and service credit more than one time. The payment to the employers’ accumulation fund, together with the regular interest compounded annually, shall, in the event of death or withdrawal from service of the member prior to retirement, be considered as accumulated contributions of the member.”

The above quoted section was the subject of Opinion No. 6475, Opinions of the Attorney General for 1956, page 333, the syllabus of which reads as follows :

“1. A member of the public employees retirement system, who, prior to June 29, 1955, redeposited in the employees’ savings fund accumulated contributions previously withdrawn, with interest, pursuant to former Section 145.31, Revised Code, or Section 486-57, General Code, thereby made restoration of the ‘annuity rights’ and contributing ‘service credit’ formerly forfeited by him.

“2. A member of the public employees retirement system, who, on or after June 29, 1955, the effective date of the latest amendment to Section 145.31, Revised Code, seeks to restore contributing ‘service credit’ previously forfeited by an earlier withdrawal of accumulated contributions, must redeposit in the employees savings fund the amount withdrawn with interest at the rate to be credited to his accumulated contributions at retirement, compounded annually, from the first of the month of with-

drawal to and including the month of deposit, and must deposit in the *employers'* accumulation fund one-half of such amount so redeposited."

(Section 145.31, Revised Code, has not been amended since the 1955 amendment referred to in the second paragraph of the above quoted syllabus.)

The credit given for military service under the provisions of Section 145.30, Revised Code, is considered as equivalent to prior service.

While the restoration of service credit pursuant to the provisions of Section 145.31, Revised Code, as it related to prior service credit for service in the armed forces of the United States was not specifically considered in Opinion No. 6475, *supra*, said opinion clearly indicates that the then Attorney General felt that restored service credit under the provisions of Section 145.31, Revised Code, subsequent to June 29, 1955 would grant to the member making the restoration payment the same rights and service credit as said member had prior to his withdrawal of contribution. With this view I am in complete accord.

It is noted that Section 145.31, Revised Code, as it read prior to June 29, 1955 provided for restoration of "annuity rights" by the payment of the accumulated contributions previously withdrawn by a member plus interest, and further provided for the restoration of "prior service credit" by an additional payment of one half of the employer's total contribution during the period of contributing membership. Section 145.31, Revised Code, as it now reads (quoted above) provides for a single payment which is equivalent in amount to the total of the two payments previously required. This is evidence of a legislative intent that such single payment under the law as it now reads would restore the member to the same position as the dual payment under former Section 145.31, Revised Code.

Such intent is further pointed out by the phraseology in Section 145.31, Revised Code, as it now reads in that said section says that a member may restore "such service credit" by making payment prescribed therein. "Such service credit" must refer to the service credit which was cancelled pursuant to his withdrawal of contributions. There can be no question that the withdrawal of contributions cancels all service credit as, by doing so, a person is no longer a member of the Retirement System and has no rights thereunder. (See Section 145.41, Revised Code) A

restoration of such service credit would therefore restore all service credit formerly cancelled.

In accordance with the above, I am of the opinion and you are advised that a member of the public employees retirement system who, subsequent to June 29, 1955, makes a restoration payment pursuant to the provisions of Section 145.31, Revised Code, thereby restores all service credit to which he was formerly entitled, including prior service credit for service in the armed forces of the United States. (Opinion No. 6475, Opinions of the Attorney General for 1956, page 333, approved and followed)

Respectfully,

MARK MCELROY

Attorney General