

1493.

FULL TIME REGULAR MEMBER, FIRE DEPARTMENT IN MUNICIPAL CORPORATION—STATUS WHERE HE DECLINES IN WRITING TO HAVE TWO PER CENT ANNUAL SALARY PAID INTO FIREMEN'S RELIEF AND PENSION FUND—SEE SECTION 4609, G. C.—RULES FOR CREDIT TOWARD RETIREMENT OF MEMBERS WHO ARE HONORABLY DISCHARGED EX-SERVICE MEN OF UNITED STATES—SEE SECTION 4612-3, G. C.—STATUS, POLICEMAN OR MEMBER OF POLICE DEPARTMENT UNDER SIMILAR CONDITIONS—SEE SECTION 4625, G. C.

SYLLABUS:

1. Under the provisions of Section 4609, General Code, as amended by the 93rd General Assembly, a full time regular member of the fire department in a municipal corporation who declines, in writing, to have two per cent of his annual salary paid into the firemen's relief and pension fund, waives any benefits to which he and his dependents would be eligible to receive from such fund, although he is entitled to receive the amount of any deductions theretofore made from his salary.

2. By the express terms of Section 4609, the two per cent, deductions from the annual salaries of the members of the fire department of a municipal corporation are required to be credited to the relief and pension fund and are not to be held intact in a separate fund or funds for the sole benefit of the individual contributors.

3. Under the provisions of Section 4612-3 of the General Code, where the trustees of a firemen's relief and pension fund adopt rules for credit toward retirement of those members of the fire department, who are honorably discharged ex-service men from the armed forces of the United States who served in time of war or with armed expeditions conducted during the period of their service, such honorably discharged ex-service men are entitled to such credit, not exceeding thirty months, as may be fixed by the trustees, regardless of the time of their military or naval services with respect to their being members of the fire department.

4. Under the provisions of Section 4625, where a policeman or member of a police department of a municipality declines, in writing, to permit a two per cent deduction of his salary to be paid to the credit of the police relief fund, he expressly waives any benefits to which he or his dependents would be eligible to receive from such fund, although he is entitled to be paid the full amount of deductions made under such section. The two per cent deductions from the salaries of such policemen or members of the police department are to be deposited to the credit of the police relief fund.

COLUMBUS, OHIO, December 2, 1939.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: I have your request for my opinion in which you ask the following questions having to do with firemen's relief and pension funds:

"Question 1. Under the provisions of amended Section 4609, G. C., does a member of the fire department or his dependents forfeit all rights to a pension or relief if he refuses to contribute the two percent of his salary to the pension fund?"

Question 2. Is the money composed of the two percent salary contributions to be paid into the regular pension fund to be used to augment the money raised by taxation for the payment of current pensions to those members already retired on pension, or are such contributions to be held intact in a separate fund for the sole benefit of the individual contributor?"

Question 3. Under the provisions of Section 4612-3, G. C., is the member entitled to credit of not more than thirty months for time served in the armed forces of the U. S. A., if such service was rendered before he became a member of the fire department, or does such allowance refer to time served with such forces that compelled his absence from membership in the fire department?"

Question 4. Will the interpretation of this new law (Am. S. B. No. 52) in reply to the foregoing questions, be applicable to the Police Relief and Pension law as to contributions, etc., as per amended Section 4625, G. C., House Bill No. 68 of the 93rd General Assembly?"

Your questions will be answered in the order in which they are asked:

1. Section 4609, General Code, as amended by the 93rd General Assembly, in Am. Sub. S. B. No. 52, effective August 10, 1939, provides that:

"Each full time regular member of the fire department in each municipal corporation unless objection is made as hereinafter provided, shall contribute two per cent of the annual salary he receives to the firemen's relief and pension fund. Such two per cent shall be deducted by the treasurer of the municipalities from the member's monthly pay, and the amount so received shall be credited to the relief and pension fund. Each contributing member shall, if he is dismissed or resigns as a member of the fire department in which he is employed, be paid by the

board of trustees of the relief and pension fund to which he has contributed the amount of his contribution plus two per cent interest compounded annually, upon demand made by him to the board. Any such person, or his widow or orphans, who has received the amount of his contribution from the relief and pension fund as provided for in this section shall not be entitled to any payment of relief or pension.

Every member of the fire department in each municipal corporation shall be deemed to consent and agree to the deductions made and provided for herein, unless he shall notify the treasurer of such municipality, in writing, to the contrary, *in which event he shall be held to have expressly waived any benefits to which he and his dependents would therein be entitled from such fund, but shall be entitled to be paid the amount of any deductions theretofore made from his salary.* Persons becoming firemen after the effective date of this act must contribute two per cent of their salary as provided for in this act and shall not have the right to object to such deduction." (Italics the writer's.)

The cardinal rule governing the interpretation and construction of statutes is well stated in 37 O. Jur., 514, in the following words:

"The right of the courts to interpret a duly enacted statute is based upon some apparent uncertainty of meaning, some apparent ambiguity of terms, or some apparent conflict of provisions. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. To interpret what is already plain is not interpretation but legislation, which is not the function of the courts, but of the general assembly. Some statutes, it has been declared, are so clear that an attempt to make them clearer is a vain labor and tends only to obscurity. * * *

No rules of statutory interpretation or construction need be resorted to to understand the provision that where a full time regular member of a fire department, as designated in the sections establishing and providing for the administration of the "Firemen's Relief and Pension Funds" (Sections 4600 to 4615, inclusive, of the General Code), notifies the treasurer of the municipality, in writing, that he does not agree to the two per cent deduction prescribed by Section 4609, supra, "he shall be held to have expressly waived any benefits to which he and his dependents would therein be entitled from such fund." Clearly, by virtue of the language above set forth, the fireman has an option either to consent to the two

per cent deduction or to waive any benefits to which he or his dependents might be entitled.

That this was the intendment of the legislature is manifest from the further provisions of Section 4609, to the effect that a fireman electing not to consent to the two per cent deduction and thereby waiving any and all benefits, "shall be entitled to be paid the amount of any deductions theretofore made from his salary", and by the mandatory provision that persons "becoming firemen after the effective date" of the act "*must* contribute two per cent of their salary as provided for" in the act "and shall not have the right to object to such deduction."

2. In your second question you ask in substance if the moneys derived from the two per cent salary deductions are "to be paid into the regular pension fund * * * to augment the money raised by taxation for the payment of current pensions to those members already retired on pension, or are such contributions to be held intact in a separate fund for the sole benefit of the contributor?"

It will be noted that by the express terms of Sections 4609, *supra*, the amount received from the two per cent deductions is required to "*be credited to the relief and pension fund.*" While the section further provides that if a contributing member be dismissed or resigns, he shall "be paid by the board of trustees of the relief and pension fund * * * the amount of his contribution plus two per cent interest compounded annually, upon demand made by him", it is the plain import of the language of the section that the two per cent deductions shall go into the relief and pension fund and not be held intact in a separate fund or funds. The moneys derived from the two per cent contributions may earn more than two per cent compounded annually, yet by the clear terms of the section under consideration, the contributing member who is dismissed or who resigns may only demand and receive from the relief and pension fund an amount equal to what he has contributed plus two per cent interest compounded annually.

This construction would seem to be consonant with the other amendments to the "Firemen's Relief and Pension Fund Law", passed by the 93rd General Assembly, which, *inter alia*, made the establishment and maintenance of a firemen's relief and pension fund mandatory in all municipal corporations having fire departments supported in whole or in part at public expense, and employing two or more full time regular members, and the enactment of Section 486-33c, General Code, with the express provision that the "Public Employees Retirement Act" should not "in any manner apply to a * * * firemen's fund established under provisions of law." That is to say, I think it fairly evident that it was the intention of the Legislature to place the firemen's relief and pension funds under consideration on a sound financial basis and that to this end the Legislature made mandatory the two per cent contributions to the

fund by full time regular members except where the firemen chose not to pay, and to waive all benefits as expressly provided in Section 4609, supra.

3. Your third question requires an examination of Section 4612-3, General Code, which reads:

“Trustees of the firemen’s relief and pension fund are hereby authorized to adopt rules for the allowance of credit toward retirement of those members of the fire department who have actively served in the armed forces of the United States army, navy or marine corps in time of warfare or when armed expeditions were conducted during their period of service, and such members have been honorably discharged; such credit shall not exceed thirty months.”

You will observe that the trustees are vested with discretionary power to adopt rules for the allowance of credit toward retirement, not exceeding thirty months to “those members of the fire department who have actively served in the armed forces of the United States army, navy or marine corps in time of warfare or when armed expeditions were conducted during their period of service, and such members have been honorably discharged.” There is nothing in this section to limit the allowance of credit toward retirement to honorably discharged ex-service men otherwise meeting the requirements of the statute, to firemen who were members of the force at or prior to their military or naval service. While the adoption of rules of the kind in question is optional with the trustees, the context of the section under consideration seems to me clearly to indicate an intention on the part of the Legislature that all honorably discharged ex-service men who served in time of warfare or in armed expeditions during their military or naval service should have the benefit of any rules adopted by the trustees.

4. Coming now to question 4, Section 4625, General Code, reads as follows:

“In each municipality maintaining a police relief fund, or in which a police relief fund is hereafter established and maintained, the treasurer of the municipality shall deduct from the salary of each policeman or member of the police department, who by its rules is designated a member thereof, for each and every payroll period an amount equal to two per centum of his salary, provided that no deduction shall be made from that portion of his salary which exceeds thirty-six hundred dollars per annum, and shall deposit the moneys so deducted to the credit of the police relief fund. Money derived from such deductions shall be used by the board of trustees of such fund for the relief of such policemen or members of the police department, who by its rules are designated as members thereof, when sickness or disability prevents their per-

formance of duty, relief of their dependents in case of death, or for pensions when honorably retired from the force. Every policeman or member of the police department, who by its rules is designated a member thereof, in such municipality shall be deemed to consent and agree to the deductions made and provided for herein, unless he shall notify the treasurer of such municipality in writing to the contrary in which event he shall be held to have expressly waived any benefits to which he and his dependents would therein be entitled from such fund, but shall be entitled to be paid the amount of any deductions theretofore made from his salary. A policeman who is separated from the department for any reason other than death or retirement, upon demand, shall be entitled to and shall be paid the full amount of deductions made under this act. If a policeman dies leaving no dependents entitled to relief or award from the police relief fund, the full amount of said deductions shall be returned to his legal representative. If this legal representative cannot be found the moneys so deducted shall be forfeited and credited to the fund. Nothing contained herein shall in any manner affect any police relief subsidiary fund heretofore established and maintained, and the right of the trustees to receive contributions thereto and make disbursements in accordance with its rules."

I assume that your fourth question has particular reference to Questions 1 and 2.

There are, as you will note, certain differences in the provisions of Section 4625, supra, and Section 4609, General Code, which are obvious upon comparison of the two sections, and need not here be pointed out in detail. It is sufficient to say that Section 4625 prohibits deductions from that portion of the salary of a member of the police force which exceeds \$3600.00 per annum. Furthermore, where a policeman or member of the police force is separated from the service for any reason other than death or retirement, he is "entitled to and shall be paid the full amount of deductions" made under the act, that is, the statute makes no provision for the return of all deductions, with two per cent. interest, compounded annually, as provided in Section 4609. Otherwise, it seems clear from a reading of Section 4625 and a comparison thereof with Section 4609, that a member of the police force who elects, in writing, not to have the two per cent. of his salary paid into the police relief fund, also waives any and all benefits to which he and his dependents might be entitled, and that the two per cent deductions so paid in are required to be deposited to the credit of the police relief fund.

In view of the foregoing, and in specific answer to your questions, it is my opinion that :

1. Under the provisions of Section 4609, General Code, as amended by the 93rd General Assembly, a full time regular member of the fire department in a municipal corporation who declines, in writing, to have two per cent of his annual salary paid into the fireman's relief and pension fund, waives any benefits to which he and his dependents would be eligible to receive from such fund, although he is entitled to receive the amount of any deductions theretofore made from his salary.

2. By the express terms of Section 4609, the two per cent deductions from the annual salaries of the members of the fire department of a municipal corporation are required to be credited to the relief and pension fund and are not to be held intact in a separate fund or funds for the sole benefit of the individual contributors.

3. Under the provisions of Section 4612-3 of the General Code, where the trustees of a fireman's relief and pension fund adopt rules for credit toward retirement of those members of the fire department, who are honorably discharged ex-service men from the armed forces of the United States who served in time of war or with armed expeditions conducted during the period of their service, such honorably discharged ex-service men are entitled to such credit, not exceeding thirty months, as may be fixed by the trustees, regardless of the time of their military or naval service with respect to their being members of the fire department.

4. Under the provisions of Section 4625, where a policeman or member of a police department of a municipality declines, in writing, to permit a two per cent deduction of his salary to be paid to the credit of the police relief fund, he expressly waives any benefits to which he or his dependents would be eligible to receive from such fund, although he is entitled to be paid the full amount of deductions made under such section. The two per cent deductions from the salaries of such policemen or members of the police department are to be deposited to the credit of the police relief fund.

Respectfully,

THOMAS J. HERBERT,
Attorney General.