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ARMED FORCES—CIVIL SERVICE EMPLOYMENTS—WHERE SALARY IS INCREASED ON BASIS OF LENGTH OF SERVICE UNTIL MAXIMUM CLASSIFICATION REACHED—TIME IN ARMED FORCES—APPLICABLE TO QUALIFY RETURNED REINSTATED MEMBERS OF ARMED FORCES FOR SUCH INCREASES—SAME CREDIT AS IF SUCH PERSONS HAD CONTINUOUSLY REMAINED IN CIVIL SERVICE POSITIONS

SYLLABUS:

In civil service employments wherein the salary paid is increased on the basis of length of service until a maximum for the classification is reached, time in the armed forces is applicable to qualify returned reinstated members of the armed forces for such increases, the same as if such persons had remained in their positions continuously during their period of service in the armed forces.

Columbus, Ohio, June 21, 1945

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have your letter which poses the following question for my opinion

“In civil service positions providing step-up in salary rating year by year until a maximum salary is reached, is the time served

by such employes, in the U. S. Armed Forces, applicable to qualify them for such increase in rating the same as if they had remained in said civil service position continuously during their period of Army service?"

The inclosure with your letter shows that the question was prompted by the reinstatement of a city fireman who had served eleven months as such, had served two and one-half years in the armed services and then was discharged. He was then reinstated to his former civil service employment as a fireman. The inclosure states:

"In this particular case a provision of employment is to the effect that an individual must serve three years prior to receiving full pay for the classification, receiving an increment step each year. * * * "

The question asked by you arises under the above facts and by reason of the following provisions found in Section 486-16a, General Code:

"Whenever the time or period of employment in the classified service affects the status, rank, rating or qualifications in any respect of any person who has served in the armed services of the United States as contemplated by this section such person shall be given credit for the period in which he served in such armed services as though such time were served in the course of his regular employment."

We may start this inquiry by recalling the ruling laid down in the case of *City of Cincinnati v. Gamble*, 138 O.S. 220; that matters involving police and fire departments, which are therein recognized to be of state-wide concern, are under the control of the state and that in the exercise of its sovereignty the state may impose duties and responsibilities upon municipalities in regard thereto. See also: *The State, ex rel. Strain v. Houston*, 138 O.S. 203.

In the case of *In Re Fortune*, 138 O.S. 385, which follows the rule of the *Gamble* case, it was said at page 388:

"By a series of decisions culminating in *City of Cincinnati v. Gamble et al.*, this court has definitely established the rule that matters pertaining to police protection are of state-wide concern and under the control of state sovereignty. It follows that civil service as applied to the police department of a city is subject to state regulation and the statute must prevail."

Because of what is said in the Gamble case and the case of State, ex rel. Strain v. Houston, supra, the word "fire" might be substituted in the above quotation wherever the word "police" appears to make it applicable to the present question.

From the above cases it may readily be concluded that whatever the meaning of the words in Section 486-16a, which are above set out, it is within the power of the Legislature to make such requirements in the situation you present since it involves a fire department.

In an opinion dated May 18, 1945 and identified as Opinion No. 259, I examined the meaning of those words of Section 486-16a above set out and came to the conclusion that those words "status, rank, rating or qualifications" had a meaning which took into consideration such things as seniority in service. In Webster's New International Dictionary I find the following definitions:

Status—"The condition of a person by which the nature of his legal personality is determined, and therefore the nature of the legal relations to the state or to other persons into which he may enter, including, as commonly used, a person's condition arising out of age (as infancy or wardship), sex (as marriage), mental incapacity, crime, alienage, or public station."

Rank—"Grade of official standing as in army, navy, or nobility * * *."

Rating—"Classification according to grade; rank; grade; class; * * *."

Qualification—"That which qualifies; any natural endowment, or any acquirement, which fits a person for a place, office, or employment, or to sustain any character; an enabling quality or circumstance; requisite capacity or possession; also, a requisite or essential of a thing."

From all of the above and without particularizing it would appear that the meaning to be taken from the words "status, rank, rating or qualifications" is such that it would qualify the person concerned to receive the increases which go with seniority in the position about which you inquire. Each of the words "status", "rank" or "rating" are so defined and I believe so understood in ordinary usage as to warrant such conclusion

There are other words in Section 486-16a which point to the correctness of the conclusion so reached. They are:

“When such classified employee is restored to his position and to the status, rank, rating or qualifications hereinbefore provided * * *.” (Emphasis added.)

The use of the underscored words above indicates that the statute intends something more than mere reinstatement to his former position for the returned member of the armed forces and that it was intended that such persons have all benefits accruing because of seniority and length of time spent in service.

Confining my answer to the precise factual question presented by you, it is my opinion that in civil service employments wherein the salary paid is increased on the basis of length of service until a maximum for the classification is reached, time in the armed forces is applicable to qualify returned reinstated members of the armed forces for such increases, the same as if such persons had remained in their positions continuously during their period of service in the armed forces.

Respectfully,

HUGH S. JENKINS

Attorney General