

2076

1. RETIREMENT SYSTEM, PUBLIC EMPLOYEES—WHERE MEMBER REACHED AGE SIXTY-NINE YEARS OR MORE—MAY FILE PRIOR TO JUNE 10, 1950, WRITTEN APPLICATION FOR CONTINUATION IN SERVICE—APPROVAL BY HEAD OF DEPARTMENT, BOARD, AUTHORITY OR INSTITUTION—CERTIFICATION BY PHYSICIAN MEMBER IS PHYSICALLY AND MENTALLY COMPETENT TO PERFORM DUTIES OF POSITION—SECTION 486-59 G. C., AM. H. B. 45, 98 G. A.
2. MEMBER WHO PRIOR TO JUNE 30, 1950, FILED APPLICATION AND PHYSICIAN'S CERTIFICATE MAY BE CONTINUED IN SERVICE, YEAR TO YEAR, BEYOND JUNE 30, 1951—MUST FILE RENEWAL APPLICATION AND PHYSICIAN'S CERTIFICATE EVERY YEAR BEFORE JUNE 30.
3. WHERE MEMBER FAILS TO FILE REQUIRED INSTRUMENTS PRIOR TO JUNE 30, 1950, REQUIREMENTS OF RETIREMENT ARE: a. A MEMBER WHO WAS OVER SEVENTY YEARS OF AGE AT TIME HE BECAME MEMBER OF SYSTEM ON JUNE 30 FOLLOWING DATE UPON WHICH HE BECAME MEMBER. b. ALL OTHER MEMBERS ON JUNE 30 FOLLOWING DATE UPON WHICH AGE SEVENTY IS ATTAINED.

## SYLLABUS:

1. A member of the public employe's retirement system who has reached the age of sixty-nine years or more may pursuant to Section 486-59, General Code, as amended by House Bill No. 45, file prior to June 30, 1950, a written application for continuation in service, approved by the head of his department, board, authority or institution, and bearing the certification by a physician licensed to practice in Ohio, that the member is physically and mentally competent to perform the duties of the particular position which he occupies.

2. A member of the public employee's retirement system as described in syllabus No. 1, who prior to June 30, 1950 files the above application and physician's certificate may be continued in service from year to year beyond June 30, 1951, providing he files a renewal application and physician's certificate every year before June 30th.

3. A member of the public employee's retirement system having reached the age of sixty-nine years or more, who fails to file the written application and physician's certificate described in syllabus No. 1 prior to June 30, 1950 is required to be retired as follows: (a) a member who was over seventy years of age at the time he became a member of the system on June 30th following the date upon which he became a member; (b) all other members on June 30th following the date upon which age seventy is attained.

Columbus, Ohio, July 26, 1950

Dorothy Strouse, Chairman, Retirement Board, Public Employes  
Retirement System  
Columbus, Ohio

Dear Madam:

Your request for my opinion reads as follows:

"The Retirement Board of the Public Employes Retirement System has instructed me to request of you an interpretation of sentence two, paragraph two of Section 486-59 of the General Code as amended by the 98th General Assembly. The particular question in which the Board is interested is whether a member sixty-nine or more years of age, who files prior to June 30, 1950, a written application for continuation in service, approved by the appointing head of his department, board, authority or institution, and bearing a certification by a physician licensed to practice in the State of Ohio that the member is physically and mentally competent to perform the duties of the particular position which he occupies, may be continued in the service year after year into the future, and beyond June 30, 1951, by following the same renewal application and approval procedure."

That part of Section 486-59, General Code, as amended by House Bill No. 45, 98th General Assembly, pertinent to your inquiry, reads as follows:

“On June 30 following the date upon which he becomes a member the retirement board shall retire any employe who was over seventy years of age at the time he became a member and shall retire all other members, except elective officers, on the June 30 following the date upon which the age of seventy is attained. Provided, that until June 30, 1950 any member having reached the age of sixty-nine years or more may, upon written application approved by the head of his department, board, authority or institution, and upon certification by a physician licensed to practice in the state of Ohio that the member is physically and mentally competent to perform the duties of the particular position which he occupies, be continued in service for a period of one year or any part thereof, such application, if approved, to expire on the June 30 following the date upon which it was filed unless renewed from year to year on or before the expiration date. Any member who accepts an allowance under section 486-59, 486-60 or 486-61 of the General Code, or who is compelled to retire and who withdraws his accumulated contributions in lieu of accepting a retirement allowance shall be ineligible for regular re-employment in any capacity which comes within the provisions of the public employes retirement act.  
\* \* \*”

As you are no doubt aware, the above quoted portion of Section 486-59 has been amended several times during the past few sessions of the General Assembly, and in all the amendments the chief purpose of the legislature seems to have been to extend the time for a member to continue in active service after the age of seventy if his appointing authority approves. Thus Section 486-59 was amended in 1947 in Senate Bill No. 7, 97th General Assembly, and in discussing that amendment the then Attorney General was of the opinion that the latest date upon which a member could make application for continuation in service was August 31, 1948, and that the latest time to which such service could be continued was June 30, 1949. See 1947 Opinions of the Attorney General, page 608.

The disputed portion of Section 486-59 prior to its amendment in House Bill No. 45, 98th General Assembly, read as follows:

“\* \* \* On June 30 following the date upon which he becomes a member the retirement board shall retire any employe who was over seventy years of age at the time he became a member and shall retire all other members, except elective officers, on the June 30 following the date upon which the age of seventy is attained. Provided, that until June 30, 1947, any member having reached the age of seventy years may, upon written application approved by the head of his department or institution, be continued in serv-

ice for a period of one year, or any part thereof, such applications to expire on the June 30 following the date upon which they were filed unless renewed on or before the expiration date. \* \* \*

You will notice that the date September 1, 1948 has been changed by Amended House Bill No. 45 to June 30, 1950. Age seventy has been changed to sixty-nine (See 1949 Opinions of the Attorney General No. 1122). Requirements of a physician's certification have been added. There have also been added several important words. Thus, the underscored words quoted below have either been added or changed :

“\* \* \* Provided, that until *June 30, 1950* any member having reached the age of *sixty-nine years or more* may, upon written application approved by the head of his department, board, authority or institution, *and upon certification by a physician licensed to practice in the state of Ohio that the member is physically and mentally competent to perform the duties of the particular position which he occupies*, be continued in service for a period of one year or any part thereof, such application, *if approved*, to expire on the June 30 following the date upon which it was filed unless renewed *from year to year* on or before the expiration date. \* \* \*” (Emphasis added.)

It must be kept in mind that the reason for the amendment of Section 486-59 by House Bill No. 45, 98th General Assembly was because of the fact that there were fifteen hundred public employes whose tenure of office would have expired on June 30, 1949. The legislature obviously wished to continue the tenure of these employes. The only question is, for how long?

In 1947, the then Attorney General was of the opinion that the latest date on which the services of a public employe who was over seventy could be continued was June 30, 1949. The legislature undoubtedly had this opinion in mind when it amended Section 486-59 in March of 1949. The then Attorney General gave as one of the reasons for his opinion that the third sentence of Section 486-59 as it then read ; stated as follows :

“On or after September 1, 1948, no such applications for continuation in service shall be approved \* \* \*”

In amending Section 486-59, the 98th General Assembly eliminated any date after which an application could not be approved and merely said that if an employer accepts a retirement allowance he shall be ineligible for re-employment. This I believe is significant for the reason that the

General Assembly must be deemed to have been aware of the 1947 opinion and having eliminated any day after which an application could not have been accepted it must have intended that applications would continue to be filed.

The only conclusion I can reach is that no original application for continuation in service may be accepted after June 30, 1950, but that if a member has filed an application prior to June 30, 1950, he may renew such application from year to year if his appointing authority approves and he files a certificate from a physician.

The reason I have reached this conclusion is based on the wording of Section 486-59. Thus, the proviso sentence states that until June 30, 1950 any member who is sixty-nine years of age or more may make written application for continuation in service. By the use of the word "until" the legislature obviously intended to prohibit applications after that date. But in referring to those applications filed before that date, the legislature said that "such applications if approved", i.e., those filed until June 30, 1950, would expire on June 30 following the date filed "unless renewed from year to year on or before the expiration date."

My second reason for reaching this conclusion is because of the elimination by the legislature of any date after which an application may be filed.

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

1. A member of the public employe's retirement system who has reached the age of sixty-nine years or more may pursuant to Section 486-59, General Code, as amended by House Bill No. 45, filed prior to June 30, 1950, a written application for continuation in service, approved by the head of his department, board, authority or institution, and bearing the certification by a physician licensed to practice in Ohio, that the member is physically and mentally competent to perform the duties of the particular position which he occupies.

2. A member of the public employe's retirement system as described in syllabus No. 1, who prior to June 30, 1950 files the above application and physician's certificate may be continued in service from year to year beyond June 30, 1951, providing he files a renewal application and physician's certificate every year before June 30th.

3. A member of the public employe's retirement system having

reached the age of sixty-nine years or more, who fails to file the written application and physician's certificate described in syllabus No. 1 prior to June 30, 1950 is required to be retired as follows: (a) a member who was over seventy years of age at the time he became a member of the system on June 30th following the date upon which he became a member; (b) all other members on June 30th following the date upon which age seventy is attached.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.