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POLICE DEPARTMENT—MEMBER APPOINTED SECRETARY POLICE RELIEF AND PENSION FUND—MAY PROPERLY RECEIVE COMPENSATION—COMPENSATION NOT RECEIVED IN CAPACITY AS MEMBER POLICE DEPARTMENT—NOT SUBJECT TO DEDUCTION FOR CONTRIBUTION TO POLICE PENSION FUND—SECTIONS 741.36, 741.43 RC.

SYLLABUS:

A member of a police department who is appointed as secretary of the police relief and pension fund of which he is a member may properly receive compensation therefor as provided in Section 741.36, Revised Code, but such compensation is not received by the individual concerned in his capacity as a member of a police department and is not subject to the deduction for contribution to such police pension fund under the provisions of Section 741.43, Revised Code.

Columbus, Ohio, December 29, 1955

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“I am enclosing a letter received from our Examiner-in-charge in Youngstown, along with a copy of an Opinion rendered by the City Director of Law in Youngstown, in which the Law Director holds that the compensation paid to the Secretary of the Board of Trustees of the Police Relief and Pension Fund (who happens to be a member of the police department and also a policeman member of said board), is subject to the four percent deduction from his compensation as secretary of the board.

“The Law Director’s ruling is based upon the theory that the position of secretary of said board is connected with and related to the duties of a policeman, when such policeman is a trustee of the said board and is subsequently elected secretary by the board members.

“Our examiner does not agree with this holding of the City Law Director, and so he submits the following question:

“Is the compensation paid to the Secretary of the Board of Trustees of the Police Relief and Pension Fund

subject to the four percent retirement deduction, when such position is occupied by a duly elected policeman member of the board of trustees of said Police Relief and Pension Fund?"

The police pension fund, created under the provisions of Chapter 741, Revised Code, is established for the purpose of providing a uniform and state-wide system of disability and retirement benefits to members of the police department. The fund, composed of tax levies and deductions from the salaries of members, is administered by a board of trustees, which under Section 741.36, Revised Code, is required to elect a secretary to keep a complete record of its proceedings, and whose compensation for such services is to be fixed by the board and paid from the pension fund. The statute, Section 741.44, Revised Code, makes the treasurer of the municipal corporation the custodian of such fund and authorizes him to make disbursements thereof upon proper order of the board.

The question here hinges on the meaning of the word "salary" in Section 741.43, Revised Code, which provides:

"In each municipal corporation in which there is established a police relief and pension fund, the treasurer of the municipal corporation *shall deduct from the salary of each member of the police department* an amount equal to four per cent of his salary for each payroll period. The sums so deducted shall be credited to such fund." (Emphasis added.)

The term "salary" as here used quite clearly has reference to the salary of a member of the police department which he receives *as such member*. The fact that an individual who receives a salary in some other capacity is also a "member" would not have the effect, under the provision noted above, to require a deduction from the salary in such other and wholly separate capacity. That such other capacity is entirely separate from membership in the police department is evident from the facts (1) that such membership is not a qualification for election as secretary of the board, and (2) that the duties of the secretary are not additional police duties nor, indeed, even germane to police duties.

On this point the situation here under consideration may clearly be distinguished from that involved in my opinion No. 4451, dated October 22, 1954, in which I held:

"Where the chief of police or member of the police department of a city, in which a municipal court is situated, is appointed by the court as bailiff of said court, pursuant to Section 1901.32

of the Revised Code, the salary paid to such officer for his service as such bailiff is subject to the deduction and payment to the Police Relief and Pension Fund as provided by Section 741.43, Revised Code."

In that case it was noted that the "member" who was appointed as bailiff was assuming "additional police duties" as evidenced by the circumstance that the legislature has plainly made the police department an arm of the municipal court. In this connection Division (D) of Section 1901.32, Revised Code, provides :

"Every police officer of any municipal corporation or police constable of a township within the territory is ex officio a deputy bailiff of the court in and for the municipal corporation or township within which he is commissioned as such police officer or police constable, and shall perform such duties in respect to cases within his jurisdiction as are required of him by a judge of said court or by the clerk or bailiff or deputy bailiffs thereof, without additional compensation. In any township which is entirely within the territory of the court, the board of township trustees may appoint police constables, who shall receive such compensation out of the general funds of the township as the board of resolution prescribes for the time actually spent in keeping the peace, protecting property, and performing their duties as police constables, and as ex officio deputy bailiffs of the court within the township."

Although it was recognized in the 1954 opinion that the provisions set out in Division (A) of this same section permitted but did not require the designation of a police officer as bailiff, it was concluded that a consideration of these two provisions in relation each to the other warranted the conclusion that where a member was so designated the effect was to impose on him additional police duties with additional compensation therefor in his capacity as a police officer.

In the instant case there is no suggestion whatever that the legislature intended to give the pension board the authority to impose "additional police duties" on a member of a police department, and it must be concluded, therefore, that any compensation received as secretary of such board is received in a wholly separate and independent capacity.

In specific answer to your inquiry, therefore, it is my opinion that a member of a police department who is appointed as secretary of the police relief and pension fund of which he is a member may properly receive compensation therefor as provided in Section 741.36, Revised Code, but

such compensation is not received by the individual concerned in his capacity as a member of a police department and is not subject to the deduction for contribution to such police pension fund under the provisions of Section 741.43, Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General