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1. POLICE RELIEF AND PENSION FUND—BOARD OF TRUSTEES—WITHOUT AUTHORITY TO CHANGE RULES IN EFFECT APRIL 1, 1947—MAY NOT AFFECT IN ANY WAY THE RIGHT TO, OR AMOUNT OF BENEFITS A MEMBER OF SUCH FUND, OR A MEMBER OF THE POLICE DEPARTMENT RETIRED UNDER THE RULES, MAY RECEIVE.
2. STATUS, MEMBER OF POLICE DEPARTMENT OF MUNICIPALITY — OCTOBER 1, 1953 — CONTRIBUTIONS — PERCENTAGES — PENSIONS AND BENEFITS IN FORCE APRIL 1, 1947—ELECTION TO ACCEPT TYPE OF BENEFITS FILED ON OR BEFORE DECEMBER 31, 1953—SECTIONS 741.493, 741.49 RC, 4631-1 GC—SB 44, 100 GA.

SYLLABUS:

1. The board of trustees of a police relief and pension fund is without authority to change the rules of such board which were in effect on April 1, 1947, so as to affect in any way the right to, or the amount of benefits which a member of such fund, or a member of the police department who has retired under said rules, may receive therefrom.

2. Under the provisions of Section 741.493, Revised Code, enacted by the 100th General Assembly, Senate Bill 44, a member of the police department of a municipality who, on October 1, 1953, is contributing four percent of his annual salary to a police relief and pension fund, and who on September 25, 1947, was contributing two percent of his annual salary to the same fund, may notwithstanding any election made by such member as provided in former Section 4631-1 of the General Code, elect to receive benefits and pensions from said fund in accordance with the rules and regulations governing the granting of pensions and benefits therefrom in force on the first day of April, 1947, or as provided by Section 741.49 of the Revised Code, provided such election, made in writing, is filed with the trustees of said fund on or before December 31, 1953.

Columbus, Ohio, November 12, 1953

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your letter requesting my opinion and reading as follows:

"Under the provisions of Section 4631-1 General Code (741.31 Rev. Code,) certain members of the police department have elected to retire under the rules and regulations of the police pension board, in effect on April 1, 1947.

"Now, at this late date, one man desires to retire, who had elected to retire under the rules effective on April 1, 1947.

"Apparently the pension board is desirous of changing the rules so that policemen retiring under the old rules can draw increased pensions, in excess of the amounts provided under the rules effective on April 1, 1947.

"The question is this:

"Can the police pension board, in 1953, change the rules in effect on April 1, 1947, so that policemen retiring under the old rules, can retire on pensions in excess of the amount now provided by the rules under which they elected to retire?"

"I will appreciate your giving this question your attention, as we have had this question more than once, as it appears that some policemen who have elected to retire under the old rules

seem to think that the pension boards can go back and change the rules in effect on April 1, 1947, and grant them higher pensions than the rules provide.

“Another question arises, in this connection:

“Can the police pension board in any municipality, in 1953, increase the pension of a retired policeman, who has previously retired under the rules in effect on April 1, 1947, and is now receiving the maximum pension allowed under the old rules?”

Section 4631-1, General Code, to which you refer, was enacted in 1947, and became effective September 25, 1947. It read as follows:

“Persons who, on the effective date of this act, have been contributing two per cent of their annual salary to a police relief and pension fund may elect to receive benefits and pensions from said fund in accordance with the rules and regulations governing the granting of pensions and benefits therefrom, in force on the first day of April, 1947. Such election must be in writing and filed with the trustees of said fund within sixty days after the effective date of this act. Provided, however, such person shall be required to contribute to the fund in the manner and in the amount provided for in section 4625 of the General Code.”

That section was part of an Act found in 122 Ohio Laws, page 614, which among other drastic changes in the law relative to police and firemen's pension systems, made compulsory the organization of a police relief and pension fund in every municipal corporation having two or more full time regular members, Section 4616, General Code, and also required every member of the fund to contribute four per cent of his salary, instead of the two per cent provided in the earlier law, Section 4625, General Code.

Section 4628, General Code, contained in the new law, set forth definite amounts of pensions for members of the fund upon superannuation retirement and allowances for disability, and also fixed the amount of pensions to be allowed widows and other dependents. The authority formerly given each pension board to regulate by adoption of rules, the amount of such pensions and allowances was wholly done away with.

Therefore, it will be seen that the provision of Section 4631-1 above quoted was a concession to members, whereby with full knowledge of all the provisions of the new law, they could elect, within sixty days from its effective date whether they would accept the provisions of the new law or “receive benefits and pensions from said fund in accordance with

the rules and regulations governing the granting of pensions and benefits therefrom, in force on the first day of April, 1947."

As already indicated, the pension board was stripped of all power to regulate or fix the amount of pensions. Section 4628 supra, 741.49 R. C., provided:

"The trustees of the police relief and pension fund shall adopt rules and regulations for the management of the police relief and pension fund under their jurisdiction and for the disbursement of benefits and pensions as set forth in this section. * * *"

The section then proceeded to set forth a schedule of the amounts that should be paid in each instance. It seems very clear, on examination of the entire law that a pension board has no authority now to revise the rules that were effective on April 1, 1947, so as to *increase* the benefits which a member prior to November 25, 1947, with full knowledge of their amount, elected to take. If it were conceded that the board has such right, then it would follow that it could also revise those rules so as to *decrease* such benefits.

It should be noted in passing, that the General Assembly, in the enactment of the Revised Code, recognized that Section 4631-1 supra, was a temporary measure, limited by its terms to a period of sixty days and accordingly it was dropped in the revision, as obsolete and useless.

Your second question, whether the pension board could now raise the pension which a member is now receiving under the rules in effect on April 1, 1947, appears to require no extended discussion. There is nothing in the law that would give the board any right to make such increase. Of course, we must apply the familiar rule that a public body created by law, has only such powers as the legislature has seen fit to grant. 32 Ohio Jurisprudence, page 933, and cases cited.

However, the 100th General Assembly has seen fit to confer upon present members of the fund a new right whereby they may secure the benefits desired, independent of any board action. It enacted in Senate Bill No. 44, Section 741.493, Revised Code. That section reads as follows:

"A member of the police department of a municipal corporation who, on October 1, 1953, is contributing four per cent of his annual salary to a police relief and pension fund and who

on September 25, 1947, was contributing two per cent of his annual salary to the same police relief and pension fund may, notwithstanding any election made by such member as provided for in volume 122, Ohio Laws, page 456 (627), section 4631-1 (General Code), elect to receive benefits and pensions from said fund in accordance with the rules and regulations governing the granting of pensions and benefits therefrom, in force on the first day of April, 1947, or as provided for by the provisions of section 741.49 of the Revised Code. Such election must be in writing and filed with the trustees of said fund on or before December 31, 1953.

"A member of the police department who makes an election pursuant to the provisions of this section shall be entitled to receive military service credit, in computing years of service in the police department, as provided for in sections 741.48 and 741.481 of the Revised Code."

It will be noted that the new right of elections provided by this section, must be exercised on or before December 31, 1953. It is also notable that it applies only to present contributing members of the department. Accordingly, it will be of no avail to a member who has already retired.

Therefore, in specific answer to your questions, it is my opinion :

1. The board of trustees of a police relief and pension fund is without authority to change the rules of such board which were in effect on April 1, 1947, so as to affect in any way the right to, or the amount of benefits which a member of such fund or a member of the police department who has retired under said rules, may receive therefrom.

2. Under the provisions of Section 741.493, Revised Code, enacted by the 100th General Assembly, a member of the police department of a municipality who, on October 1, 1953, is contributing four percent of his annual salary to a police relief and pension fund, and who on September 25, 1947, was contributing two percent of his annual salary to the same fund, may notwithstanding any election made by such member as provided in former Section 4631-1 of the General Code, elect to receive benefits and pensions from said fund in accordance with the rules and regulations governing the granting of pensions and benefits therefrom in force on the first day of April, 1947, or as provided by Section 741.49 of the Revised Code, provided such election, made in writing, is filed with the trustees of said fund on or before December 31, 1953.

Respectfully,

C. WILLIAM O'NEILL

Attorney General