

OPINION NO. 88-073**Syllabus:**

1. Under R.C. 145.37(B)(5) and R.C. 3307.41(B)(5), the paying retirement system is generally not authorized to reduce the amount of credit certified to it by another system.
2. Under R.C. 145.37(B)(5) and R.C. 3307.41(B)(5), the paying retirement system may reduce the credit certified to it by another system only when a person has received more than one year of retirement credit for any one year, as "year" is defined in the law of the paying system.

To: C. James Grothaus, Executive Director, State Teachers Retirement System of Ohio, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, October 13, 1988

I have before me your request for my opinion concerning the application of R.C. 145.37, which permits a person who has been a member of more than one of the non-uniformed state retirement systems to combine his service credit and contributions and retire under one system. R.C. 145.37¹ provides in pertinent part:

To coordinate and integrate membership in the state retirement systems, the following provisions apply:

(A) State retirement systems are the public employees retirement system, the state teachers retirement system, and the school employees retirement system.

(B) At the option of a member, total contributions and service credit in all state retirement systems shall be used in determining the eligibility and total retirement benefit payable. When total contributions and service credit are so combined, the following provisions apply:

....
(2) "Total service credit" includes the total credit in all state retirement systems except that such credit shall not exceed one year for any period of twelve months.

¹ The Revised Code chapters governing Public Employees Retirement System (PERS) and State Teachers Retirement System (STRS) contain virtually identical statutes which provide for combined retirement. See R.C. 145.37 (providing for combined retirement under PERS); R.C. 3307.41 (providing for combined retirement under STRS). For ease of discussion, I will refer throughout this opinion to R.C. 145.37, although my conclusions also apply to R.C. 3307.41.

....
 (4) The state retirement system in which the member had the greatest service credit without adjustment, shall determine and pay the total retirement benefit. Where his credit is equal in two or more state retirement systems, the system having the largest total contributions of the member shall determine and pay the total retirement benefit.

(5) In determining the total credit to be used in calculating the retirement benefit, credit shall not be reduced below that certified by the system or systems transferring credit, except that such total combined service credit shall not exceed one year of credit for any one "year" as defined in the law of the system making the calculation.

(6) The state retirement system determining and paying the retirement benefit shall receive from the other system or systems the member's refundable account at retirement plus an equal amount from the employer's accumulation fund.

Thus, R.C. 145.37(B) allows a member to consolidate his service credit earned in all the state retirement systems and to have his total service credit used in the determination of his retirement benefit. The retirement system in which the member had the most service credit must determine and pay the total retirement benefit. R.C. 145.37(B)(4).

In the situation you describe in your request, the individual earned credit in the Public Employees Retirement System (PERS) and subsequently earned credit in the State Teachers Retirement System (STRS). Because the individual earned more credit in PERS than in STRS, PERS will be the paying retirement system. STRS certified to PERS that the individual earned .40 years of credit from September 1, 1986 to December 31, 1986 and .60 years of credit from January 1, 1987 to June 30, 1987. PERS, the paying retirement system, reduced from .60 to .50 the amount of credit for January 1, 1987 to June 30, 1987. You ask whether PERS, as the paying retirement system, may make this reduction.

Your question is addressed in R.C. 145.37(B)(5), which provides:

In determining the total credit to be used in calculating the retirement benefit, *credit shall not be reduced below that certified by the system or systems transferring credit, except that such total combined service credit shall not exceed one year of credit for any one "year" as defined in the law of the system making the calculation.* (Emphasis added.)

Unless a statute indicates otherwise, the word "shall" is mandatory rather than permissive in nature. *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one). Under R.C. 145.37(B)(5), therefore, the general rule is that the paying system is not permitted to reduce the credit certified to it by another system.²

However, R.C. 145.37(B)(5) sets forth an exception to this general rule. R.C. 145.37(B)(5) provides that, in calculating the retirement benefit, "such total combined service credit shall not exceed one year of credit for any one 'year' as defined in the law of the system making the calculation." In other words, a person shall receive no more than one year of credit for any one "year," as "year" is defined in the law of the paying system. *See also* R.C. 145.37(B)(2) (defining "total service

² In the situation which led to your request, STRS certified to PERS that the individual earned .60 years of credit for the period of January 1st to June 30, 1987. It has been suggested that the "credit" in this case is the actual dates worked, i.e., January 1 through June 30, 1987. For the following reasons, I reject this suggestion and conclude that the "credit" is .60 years. "Service credit" and "calendar months" are clearly two separate terms which are not synonymous. *See* R.C. 145.01(H)(2); R.C. 145.01(E)(1). In various Revised Code sections, "credit" is referred to as an amount, usually measured in terms of years and percentages of years.

credit" as "the total credit in all state retirement systems except that such credit shall not exceed one year for any period of twelve months"). A plain and unambiguous statute need only be applied rather than interpreted. *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five). In the example you provided, STRS certified credit to PERS for a person who earned no more than one year of retirement credit in a twelve-month period. Because R.C. 145.37(B)(5) authorizes the paying system to reduce the credit certified to it only when the person's credit for one year exceeds one year, PERS is not authorized to reduce the credit in this situation.

Therefore, it is my opinion and you are advised that:

1. Under R.C. 145.37(B)(5) and R.C. 3307.41(B)(5), the paying retirement system is generally not authorized to reduce the amount of credit certified to it by another system.
2. Under R.C. 145.37(B)(5) and R.C. 3307.41(B)(5), the paying retirement system may reduce the credit certified to it by another system only when a person has received more than one year of retirement credit for any one year, as "year" is defined in the law of the paying system.

See, e.g., R.C. 145.01(T); R.C. 145.37(B)(5); R.C. 3307.01(S). Credit is multiplied by other numbers to determine retirement benefits. *See* R.C. 145.33(A)(5); R.C. 3307.38(B).

Moreover, a member of a particular retirement system is entitled to a certain amount of credit from that retirement system. *See, e.g.*, R.C. 3307.31 (STRS "shall credit a year of service to any teacher who is employed on a full-time basis" during the school year). Thus, the retirement system in which the person was a member determines the amount of credit earned by the member. It is this amount which is certified to the paying system under the combined retirement statutes.