

1303.

STATE TEACHERS' RETIREMENT SYSTEM—STATE BOARD MAY MAKE OPTIONAL WITH TEACHERS WHO ARE NOT REQUIRED TO HAVE A TEACHERS' CERTIFICATE, THEIR INDIVIDUAL ENTRANCE INTO MEMBERSHIP IN SAID SYSTEM—HOW EXEMPTION FROM MEMBERSHIP IN SAID SYSTEM CAN BE MADE BY COLLEGE OR INSTITUTION SUPPORTED IN WHOLE OR IN PART BY STATE—OHIO UNIVERSITY.

1. *Under the provisions of section 7896-24 G. C., the state retirement board of the state teachers' retirement system may, in its discretion, make optional with teachers who are not required to have a teachers' certificate, their individual entrance into membership in the state teachers' retirement system.*

2. *Where a college or institution supported in whole or in part by the state, or any subdivision thereof, enters the state teachers' retirement system, prior to September 1, 1920, the teachers in such college or institution may file with their employer, prior to September 1, 1920, a statement in writing requesting exemption from membership in the state teachers' retirement system, as provided in section 7896-22, paragraph (a).*

COLUMBUS, OHIO, June 3, 1920.

HON. W. E. KERSHNER, *Secretary State Teachers' Retirement System, 71 East State Street, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter requesting the opinion of this department upon the following questions:

"The faculty and trustees of Ohio University have taken the steps necessary under section 7896-22 (c) G. C. to become members of the retirement system.

Section 7896-24 provides that:

"The retirement board, notwithstanding the foregoing provisions, may deny the right to become members to any class of teachers * * * who are not required to have a teacher's certificate * * *."

Under this section, may individual members of the faculty be granted exemption from membership indefinitely?

Section 7896-22 (c) provides that:

"The teachers in any school or college or other institution supported in whole or in part by the state or any subdivision thereof and wholly controlled and managed by the state or any subdivision thereof shall become members on the same terms and conditions as the teachers in the public schools * * *."

Does this section limit the exemption right of members of the faculty to the right of public school teachers for exemption as given in section 7896-22 (a)?"

The state teachers' retirement system act provides in section 7896-22 G. C., which you quote in part, that teachers in any school or college, or other institution, supported in whole or in part by the state, or any subdivision thereof, and wholly controlled and managed by the state, or any subdivision thereof, may become members of the state teachers retirement system, provided that the board of trustees or other managing body, by formal resolution adopted before September 1, 1921, "accepts all the requirements and obligations imposed by this act upon employers of members." The institution which you mention being one that is supported and controlled by the state, comes within this class and its teachers are eligible in the state teachers' retirement system, provided the provisions of the act itself are carried out. Your question submitted therefore is, whether individual members of the faculty may be granted exemption from membership indefinitely under the provisions of section 7896-24 G. C., or whether on the other hand certain language in section 7896-22 G. C. would govern.

Paragraph (c) of section 7896-22 G. C. says that these teachers in the described schools and colleges "shall become members on the same terms and conditions as the teachers in the public schools" and you possibly have in mind the question as to whether the exemption granted in paragraph (a) of section 7896-22 G. C. would apply to teachers in schools, colleges or institutions.

It will be noted that section 7896-22 G. C. is subdivided into paragraphs (a), (b), (c) and (d) and that paragraph (c) treats specifically of the teachers in schools and colleges, while paragraphs (a), (b) and (d) seemingly refer to teachers in the public schools, unless (as regards other teachers in colleges) paragraph (c) of 7896-22 G. C. has first been complied with prior to September 1, 1920. That the teachers in the schools and colleges hardly fall within the language of paragraph (a) of section 7896-22, after September 1, 1920, is further indicated by the fact that the outstanding date in paragraph (a) is "the first day of September, 1920," while the outstanding date in paragraph (c), bearing upon schools and colleges, is "September 1, 1921." A teacher in a college or institution always has the rights and privileges which are provided in section 7896-22, paragraph (c) and section 7896-24 G. C., while section 7896-22, paragraph (a) operates only on a condition which prevails in September, 1920.

In your quotation from section 7896-24, you call attention to the power of the retirement board to *deny* the right to become members *to any class* of teachers "whose compensation is only partly paid by the state or who are not serving on a per annum basis, or who are on a temporary basis, or who are not required to have a teacher's certificate," while *the grant* to individual teachers really occurs in that part of section 7896-24 which you have omitted.

As far as the case at hand is concerned, that is, the question of teachers in a university supported and controlled by the state, this language of section 7896-24 G. C. would apply:

"The retirement board, *notwithstanding the foregoing provisions*, may deny the right to become members to any class of teachers, * * * who are not required to have a teacher's certificate, and *it may also in its discretion make optional with teachers in any such class their individual entrance into membership.*"

The above section, 7896-24, follows the language which you cite in section 7896-22, and it is noted that section 7896-24 blankets the entire proposition by providing that "*notwithstanding the foregoing provisions,*" one of which is that appearing in section 7896-22 G. C. The exemption clause occurring in section 7896-22 G. C., paragraph (a), does not refer to teachers in colleges and institutions supported and

controlled by the state unless paragraph (c) of 7896-22 has been complied with prior to September 1, 1920, and their later individual entrance into membership in the state retirement system is provided for in section 7896-24 G. C.

It must therefore appear that section 7896-24 governs in the question at hand rather than section 7896-22, and it is the opinion of the attorney-general that:

1. Under the provisions of section 7896-24 G. C., the state retirement board of the state teachers' retirement system may, in its discretion, make optional with teachers who are not required to have a teacher's certificate, their individual entrance into membership in the state teachers' retirement system.

2. Where a college or institution supported in whole or in part by the state, or any subdivision thereof, enters the state teachers' retirement system, prior to September 1, 1920, the teachers in such college or institution may file with their employer, prior to September 1, 1920, a statement in writing requesting exemption from membership in the state teachers' retirement system, as provided in section 7896-22, paragraph (a).

Respectfully,

JOHN G. PRICE,

Attorney-General.

1304.

INHERITANCE TAX LAW—BEQUEST TO CHURCH FOR GENERAL PURPOSES IS TAXABLE.

A bequest to a church for general purposes is taxable under the present inheritance tax law.

COLUMBUS, OHIO, June 3, 1920.

HON. ALLEN J. SENEY, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—Receipt of your letter of recent date is acknowledged in which you request the opinion of this department as to whether or not a bequest to a church for general purposes is taxable under the present inheritance tax law.

In your letter you refer to opinions of former attorneys-general in which the old collateral inheritance tax law was held applicable to bequests of this kind,—that is, it was held that such bequest was not exempt.

As you point out in your communication, the question is not even as doubtful under the present law as it was under the former law on account of the omission of the words "or other exclusively public purposes" from the present inheritance tax law. The decisions which you cite,—Gerke vs. Purcell, 25 O. S. 229, and Water-son vs. Halliday, 77 O. S. 150, are to the point that a church is not a "charitable institution."

It seems clear, therefore, and it is the opinion of this department that a bequest of the kind mentioned by you is taxable under the present inheritance tax law of this state.

Respectfully,

JOHN G. PRICE,

Attorney-General.