

“But the intent of the lawmakers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the lawmaking body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

Therefore, in specific answer to your question it is my opinion that, the members of the State Employees Retirement Board must retire, at the end of the year 1937, all state employes who were over seventy years of age at the time they became members and all state employes who attained the age of seventy years at the end of the year 1937 unless any such state employe is in the classified service holding a position on account of exceptional qualifications under the provisions of Section 486-14, General Code, or any such state employe has had approval by the head of his department or institution his application for continuance in service for a period of one year.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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1722.

STATE TEACHERS' RETIREMENT SYSTEM—STATE EMPLOYEES' RETIREMENT SYSTEM—DEFINITION WORD “EMPLOYE”—STATUS AS TO PENSION WHERE EMPLOYE IS PART TIME TEACHER—PART TIME EMPLOYE NOT ENTITLED TO MEMBERSHIP IN EACH SYSTEM—APPLICATION OF SECTION 486-32 G. C.

*SYLLABUS:*

1. *One, who until August 1, 1937, was a teacher, and contributed to the State Teachers' Retirement System, and has not withdrawn his accumulated deductions, or retired on a pension, or rendered less than two years' service as a teacher in any four year period, is not entitled to membership in the State Employees' Retirement System upon being employed by the state on August 1, 1937, in a capacity other than a teacher.*

2. *One who has retired on a pension, from the State Teachers' Retirement System, and is holding a state office not elective, under the State of Ohio, is entitled to membership in the State Employes' Retirement System.*

3. *One who is employed by the Ohio State University during three months of each year, and contributes to the State Teachers' Retirement System for this three months' period, and during the other nine months in each year he is employed by the Agricultural Experiment Station, in a position other than teaching and cannot be a contributor to the State Teachers Retirement System for this nine months' work, comes within the provisions, and is a member of the State Teachers' Retirement System, and therefore, by virtue of paragraph (4), of Section 486-32, supra, is not entitled to membership in the State Employes Retirement System, and cannot contribute to each system on the basis of service rendered in one system as a teacher, and in the other as a "state employe."*

COLUMBUS, OHIO, January 6, 1938.

*State Employes Retirement Board, Columbus Ohio.*

GENTLEMEN: This will acknowledge receipt of your recent communication, which reads as follows:

"An employe of the Ohio State Reformatory, C. M. G., has been employed in a teaching capacity at that institution for a number of years, and until August 1, 1937, was a contributing member of the Teachers Retirement System. On that date he was appointed as night captain, thus being a regular state employe according to the definition of such term. Mr. G. is still a member of the Teachers Retirement System inasmuch as he has not withdrawn his accumulated contributions in fund, and while he is eligible at this time, by virtue of his age, to receive from the Teachers System a pension, he has not, as yet, requested it.

Sec. 486-32 G. C. provides the definition of a state employe but states that 'the term "state employe" shall not include those persons who come within the provisions of the State Teachers Retirement System.' The question is therefore, would Mr. G. still be considered as coming within the provisions of the State Teachers Retirement System and therefore, exempt from participation in the State Employes Retirement System, or, would the fact that the position which he now holds is not a teaching position on which he could contribute to the Teachers Retirement System throw him within the compulsory provisions for participation in this System?

I would also like an opinion from you as to whether an individual on a pension from the Teachers Retirement System but who is now holding a state office can participate in the State Employes Retirement System, and upon fulfillment of the service and age requirements can receive a pension from this System based upon his service as a state employe.

We also have another case of an individual who is employed by the Ohio State University during the three summer months each year in a teaching capacity and who contributes to the Teachers Retirement System during these three months; during the other nine months of each year he is employed by the Agricultural Experiment Station in a position other than teaching on which he cannot participate in the Teachers Retirement System. The question is, can such individual contribute to each System on the basis of such services rendered, which comes under the provisions of the respective Systems, and expect at retirement age to receive a pension from both Systems based upon the services actually rendered in the two different capacities?

Inasmuch as there are a number of cases similar to those mentioned above, and will continue to be more of them in future years, I will appreciate a formal opinion from you."

Section 486-32, paragraph (4), General Code, provides as follows:

"'State employe' shall mean any person holding a state office, not elective, under the State of Ohio, or employed and/or paid in whole or in part by the State of Ohio in any capacity whatsoever. But the term 'state employe' shall not include those persons who come within the provisions of the State Teachers Retirement System, as provided for in the General Code (Sections 7896-1 to 7896-63)."

It is clear, from the language employed in paragraph 4, of Section 486-32, *supra*, that a person cannot be a "state employe," within the meaning of the State Employes Retirement System Act, if such person comes within the provisions of the State Teachers Retirement System Act.

Section 7896-25, General Code, reads as follows:

"The membership of any person in the retirement system shall cease if he withdraws his accumulated deductions or if he retire on a pension as provided in this act, or if he die, or if in

any four-year period after he last became a member, he shall render less than two years of service as a teacher, unless the retirement board in accordance with its rules and regulations shall grant a longer period of absence from active service as a teacher without the loss of his status as a member. But the retirement board may reinstate a teacher who has withdrawn his accumulated deductions if he repay to the retirement board the amount he has withdrawn and interest at 4% from the date of withdrawal to the date of reinstatement on or before June 30, 1934."

Membership in the State Teachers Retirement System ceases upon withdrawal of accumulated deductions, or, retirement on a pension, or death, or, of rendering less than two years' service as a teacher in any four year period, as therein provided.

From the statements set forth in your communication it is evident: that, the employe in question, is a member of the State Teachers Retirement System, having been employed as a teacher in the Ohio State Reformatory, and as a teacher, having contributed until August 1, 1937, to the State Teachers Retirement System, and that therefore, said person not having withdrawn his accumulated deductions, or retired on a pension, or rendered less than two years' service as a teacher in any four year period, is a Member of the State Teachers Retirement System, and is not entitled to membership in the State Employes Retirement System, by virtue of the provisions of paragraph (4) of Section 486-32, supra, which expressly excludes any person from being a "state employe" who comes within the provisions of the State Teachers Retirement System Act.

In answer to your second question, it is to be noted that by virtue of the provisions of Section 7896-25, supra, the membership of any person in the State Teachers Retirement System ceases if such person "retire on a pension." The person to whom you refer in your communication has retired on a pension, and "is now holding a state office."

There is no provision in the State Teachers Retirement System Act which prevents or prohibits a teacher who has retired on a pension, from securing employment other than as a teacher.

The membership of the retired teacher having ceased in the State Teachers Retirement System, there is nothing to prevent such "retired teacher" from "holding a state office." Such a person is a "state employe," as defined in the provisions of paragraph (4), of Section 486-32, supra, to wit: a "person holding a state office, not elective, under the State of Ohio," and therefore, is entitled to membership in the State Employes Retirement System.

The answer to your third question is contained in the answers to your first and second questions. The person referred to in your communication, is employed by the Ohio State University during three months each year, and contributes to the State Teachers' Retirement System. He therefore comes within the provisions, and is a member of the State Teachers' Retirement System. The fact that during the other nine months in each year he is employed by the Agricultural Experiment Station in a position other than teaching, and cannot be a contributor to the State Teachers' Retirement System for this nine months' work, does not affect his membership in the State Teachers Retirement System.

Membership in the State Employes Retirement System is dependent upon one being a "state employe." Therefore, since it is expressly stated in paragraph (4), of Section 486-32, supra, that the term "state employe" shall not include those persons who come within the provisions of the State Teachers' Retirement System, it is impossible for a member of the State Teachers' Retirement System to be entitled to membership in the State Employes Retirement System, and to contribute to each system on the basis of service rendered in one system as a teacher, and in the other, as a state employe.

In specific answer to your questions it is my opinion :

1. One, who until August 1, 1937, was a teacher, and contributed to the State Teachers Retirement System, and has not withdrawn his accumulated deductions, or retired on a pension, or rendered less than two years' service as a teacher in any four-year period, is not entitled to membership in the State Employes' Retirement System upon being employed by the state on August 1, 1937, in a capacity other than a teacher.

2. One who has retired on a pension, from the State Teachers Retirement System, and is holding a state office not elective, under the State of Ohio, is entitled to membership in the State Employes Retirement System.

3. One who is employed by the Ohio State University during three months of each year, and contributes to the State Teachers Retirement System for this three months' period and during the other nine months in each year he is employed by the Agricultural Experiment Station, in a position other than teaching and cannot be a contributor to the State Teachers Retirement System for this nine months work, comes within the provisions, and is a member of the State Teachers Retirement System, and therefore, by virtue of paragraph (4), of Section 486-32, supra, is not entitled to membership in the State Employes Retirement System,

and cannot contribute to each system on the basis of service rendered in one system as a teacher, and in the other as a "state employe."

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

1723.

APPROVAL.—LEASES, RESERVOIR LAND, STATE OF OHIO, INDIAN LAKE, OHIO, ANNUAL RENTALS, PEARL WEIFFENBACH AND L. D. ARTHUR; BERTHA M. BLACK; MRS. LENA RUBERRY; LINCOLN D. ARTHUR; NINA M. DAF-LIER; THOMAS E. BARRINGTON—EACH \$20.00, AND DORA WEIFFENBACH \$45.00—ALL FOR TERM FIFTEEN YEARS.

COLUMBUS, OHIO, January 7, 1938.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a number of reservoir land leases in triplicate, among which were those hereinafter designated which granted and demised to the several lessees therein named parcels of reservoir lands at Indian Lake, Ohio.

The leases here referred to are each and all for a stated term of fifteen years and provide for an annual rental of six per centum upon the appraised value of the parcel of land covered by the lease. Designated with respect to the names of the several leases, the locations of the several parcels covered by the leases and the annual rentals therein provided for, these leases are:

Lessee	Location of Property	Rental
Pearl Weiffenbach and L. D. Arthur	Pt of SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of S 36, T 6S, R 8 E. Washington Twp., Logan Coun- ty, Ohio	\$20.00
Dora Weiffenbach	Pt of SW $\frac{1}{2}$ of NW $\frac{1}{4}$ of S 36, T 6S, R 8 E., Washington Twp., Logan Coun- ty, Ohio	\$45.00
Bertha M. Black	Pt of SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 36, T 6 S, R 8 E, Washington Township, Logan County, Ohio	20.00
Mrs. Lena Ruberry	Pt of SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of S 36, T 6 S, R 8 E, Washington Twp., Logan County, Ohio	20.00