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1. PENSIONS — POLICEMEN AND FIREMEN — SECTION 4123.01 AND 4123.02 R. C.—RELATE TO PARTIAL DISABILITY IRRESPECTIVE OF WHETHER PENSION BASED ON AGE AND LENGTH OF SERVICE OR DISABILITY.
2. COMPENSATION FOR PERMANENT PARTIAL DISABILITY — SECTION 4123.57 R. C. — PAID ONLY TO EXTENT THAT AWARD EXCEEDS PORTION PROVIDED BY MUNICIPAL TAXATION.
3. PERCENTAGE OF PERMANENT PARTIAL DISABILITY AND IMPAIRMENT OF EARNING CAPACITY TREATED ALIKE UNDER SECTION 4123.57 R. C.
4. INJURIES RECEIVED WHILE EMPLOYED — IN DETERMINATION OF COMPENSATION RIGHTS — NOT AFFECTED WHERE EMPLOYEE IS RETIRED ON PENSION.
5. MEDICAL BENEFITS UNDER SECTION 4123.66 R. C. ARE IN ADDITION TO REGULAR STATE COMPENSATION.
6. PAYMENT BEYOND RETIREMENT REDUCED — WHERE AWARD IS IN EXCESS OF ORIGINAL AWARD LESS PORTION PROVIDED BY MUNICIPAL TAXATION.
7. APPLICATION FILED AFTER RETIREMENT DATE—INJURY SUSTAINED DURING EMPLOYMENT — AWARD MAY BE FOR FULL AMOUNT ACCRUED BEFORE RETIREMENT.

SYLLABUS:

1. The provisions of Sections 4123.01 to 4123.02, Revised Code (Section 1465-61, General Code), relating to the payment of compensation to policemen and firemen who are drawing a policemen's or firemen's pension applies to an award for partial disability under Section 4123.57 (b), Revised Code (Section 1465-80 (b), General Code), irrespective of whether said pension is based on retirement due to age and length of service or on disability. (*City of Columbus v. Industrial Commission*, 158 Ohio St., 240.)

2. Compensation for permanent partial disability under paragraph (C) of Section 4123.57, Revised Code (Section 1465-80 (c), General Code), may be paid to a policeman or fireman on pension for a scheduled loss under said section, but only to the extent that the award of compensation exceeds that portion of the amount of said policeman's or fireman's pension provided by municipal taxation.

3. The provisions of Sections 4123.01 and 4123.02, Revised Code (Section 1465-61, General Code), operate alike as to an award of compensation for a percentage of permanent partial disability under paragraph (b) of Section 4123.57, Revised Code (Section 1465-80 (b), General Code), and as to an award for impairment in earning capacity under paragraph (a) of Section 4123.57, Revised Code (Section 1465-80 (a), General Code); and in each instance workmen's compensation can be paid to a policeman or fireman on pension only to the extent that the Workmen's Compensation award exceeds that portion of such pension provided by municipal taxation. (*Industrial Commission v. Flynn*, 129 Ohio St., 220.)

4. A policeman or fireman injured while employed as such is an employee within the meaning of the Workmen's Compensation Act; and his status as such is not affected by the fact that he is retired on a policeman's or fireman's pension insofar as any determination of his rights to compensation arising from said injury are concerned.

5. A policeman or fireman participating in a police or fireman's pension fund and receiving more benefits from such fund than he could from regular state compensation is not thereby eliminated from classification as an employee under the provisions of Sections 4123.01 and 4123.02, Revised Code (Section 1465-61, General Code). The medical benefits provided by Section 4123.66, Revised Code (Section 1465-89, General Code), are in addition to the "regular state compensation" to which reference is made in Sections 4123.01 and 4123.02, Revised Code (Section 1465-61, General Code), and the amount of such additional benefits should not be considered as a part of such "regular state compensation" in the determination, under the provisions of such latter section, of the comparative amounts of (1) regular state compensation and (2) sums received from pension funds provided by municipal taxation.

6. An award of compensation to a policeman or fireman which extends through a period beyond his retirement on a policeman's or fireman's pension must be reduced on the day of said retirement so that the award after said date is not in excess of the amount by which the original award exceeds that portion of such pension provided by municipal taxation.

7. Where an application for compensation is filed by a claimant receiving a policeman's or fireman's pension and said application is filed after the date of his retirement alleging an injury sustained in the course of his employment as a policeman or fireman, an award may be made for the full amount of compensation which is determined to have accrued before retirement.

Columbus, Ohio, September 20, 1956

Hon. Joseph J. Scanlon, Administrator
Bureau of Workmen's Compensation, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"This office has heretofore submitted to you a request for an opinion on the following questions dealing with the provisions of

Section 1465-61 Ohio General Code, and the relationship of this particular section of 1465-80 of the Ohio General Code. All of these questions had to do with the right of the Commission to award compensation to policemen and firemen who are, for one reason or another, receiving a pension from the subdivision which they serve.

“In view of the Supreme Court’s decision on this particular matter, we are resubmitting the questions, and ask that you furnish us with an opinion as to the position which should be taken by the Industrial Commission on each of these questions, in light of said court decision.

“(1) Do the provisions of Section 1465-61 G. C. relating to the prohibition of payment of compensation to Police and Firemen, who are drawing a pension, apply to an award which could be made for partial disability under Section 1465-80 G. C., if one retires—(a) due to age, or (b) length of service, rather than on a disability pension, which condition resulted from the injury involved in the claim?

“(2) Can compensation for permanent partial disability under Par. (c) of Section 1465-80 G. C. be paid for a scheduled loss where one is receiving a Police or Firemen’s Pension, in view of the provision of Section 1465-61 G. C.?

“(3) Where a Police or Fireman is receiving a pension, which is less than he would be entitled to under Workmen’s Compensation, can compensation for percentage of permanent partial disability under Par. (b) of Section 1465-80 G. C. be paid for the full statutory maximum amount, if the claimant elects to receive compensation on that basis? In other words, does the provision for deduction of pension from the award of compensation apply only to those claims where compensation is to be paid on an impairment in earning capacity under Par. (a) of Section 1465-80 G. C.?

“(4) In view of the provision of Par. (b) of Section 1465-80 G. C., that ‘The Commission shall determine the percentage of permanent partial disability and the claimant shall receive 66⅔% * * *’, does this constitute an exception to the prohibition of payment of compensation in cases where the claimant is receiving either a Police or Firemen’s pension as provided in Section 1465-61 G. C., or is the statute as to payment of compensation for percentage of permanent partial disability limited by the limitation in Section 1465-61 G. C.?

“(5) Do the provisions of Section 1465-61 G. C. mean that if a claimant is participating in a Police or Firemen’s pension fund and receives more than he could receive under Workmen’s Compensation that this eliminates him as being an employee within the provisions of that statute and, therefore, cannot receive

any benefits whatever, even for payment of medical bills? This appears to have been the conclusion of the Second District Court of Appeals in the case of *Brown vs. The Industrial Commission*, 34 O. L. A. 557.

“(6) In cases where an award is made for percentage of permanent partial disability at a time when the claimant is still working as a Police or Fireman, and such award continues for a period of time in the future, and where before the expiration of this award the claimant then retires, should the award be stopped as of the retirement date, or can the full amount which had been awarded to the claimant be paid since the finding was made in the claim before the claimant retired?”

“(7) In those cases where it is a case of deemed election to take compensation under Par. (b) of Section 1465-80 G. C. and all of the compensation actually accrued before the claimant retired on a pension, but application for such an award is not made and actual payment could not be started until the claimant's Application for Determination of the Percentage of Permanent Partial Disability had been filed and hearing held on this question, would the claimant be entitled to such an award despite the provisions of Section 1465-61 G. C. since technically the award could have been paid prior to retirement, if application had been made prior thereto?”

“(8) As Section 1465-61 G. C. states that, ‘Unless the amount of the pension funds provided by municipal taxation * * *’, does this mean that if it can be ascertained as to the proportionate amount of the pension due to the claimant that was contributed by him, and the amount that was derived from municipal taxation, then can Workmen's Compensation be paid over and above the proportionate part of the pension which is derived from municipal taxation?”

Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code), provides in part as follows:

“The term ‘employee’, ‘workman’ and ‘operative’ as used in this act shall be construed to mean:

“1. Every person in the service of the state or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, and executive officers of boards of education, under any appointment or contract of hire, express or implied, oral or written, except any elected official of the state, or of any county, city, township, or incorporated village, or members of boards of education. Provided, that *nothing in this act* shall apply to police or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen's or

firemen's pension funds which are now or hereafter may be established and maintained by municipal authority under existing laws, unless the amount of the pension funds provided by municipal taxation and paid to such police or firemen shall be less than they would have received had the municipality no such pension funds provided by law ; in which event such police and firemen shall be entitled to receive the regular state compensation provided for police and firemen in municipalities where no policemen's or firemen's pension funds have been created under the law ; less, however, the sum or sums received by the said policemen or firemen from said pension funds provided by municipal taxation, and the sum or sums so paid to said policemen or firemen from said pension funds shall be certified to the industrial commission of Ohio by the treasurer or other officer controlling such pension funds." (Emphasis added.)

The Supreme Court decision to which you refer is *State, ex rel. City of Columbus v. Industrial Commission*, 158 Ohio St., 240. The syllabus of that case reads as follows :

"1. Under the provisions of Section 1465-61, General Code, a retired city policeman is not entitled to an award of state workmen's compensation in addition to a pension where that part of the pension provided by municipal taxation exceeds the award.

"2. If the amount of the award is larger than the amount of the pension, that part of the pension provided by municipal taxation should be deducted from the award."

The facts in the *City of Columbus* case, *supra*, were not in dispute. Albert C. Wilson, while in the performance of his duties as a policeman slipped and fell fracturing his kneecap. An application for compensation was duly filed and workmen's compensation was awarded by an order of March 31, 1952, based on a 25% disability under paragraph (b) of Section 1465-80, General Code (Section 4123.57 (b), Revised Code). The *City of Columbus*, as his employer, filed an action in mandamus in the Supreme Court of Ohio alleging that the action of the Industrial Commission of Ohio in making said award was an abuse of discretion and, therefore, contrary to law based on the fact that Wilson was then and had been since his retirement from the *Columbus* police force on May 25, 1950, receiving a pension of \$155.00 per month from the police relief and pension fund, under the provisions of Section 4628 et seq., General Code (Section 741.49 et seq., Revised Code). The *City of Columbus* admitted that Wilson was injured in the course of his employment and that he was 25% disabled as a result of said injury.

The point of the dispute between the relator and the respondents was based entirely on the interpretation to be placed on the language of Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code), and particularly as such language relates to a case (1) where the city did not segregate the amount of its police pension fund "provided by municipal taxation" from the amount provided by other sources, including a compulsory deduction from the pay of the policeman, and did not certify to the Industrial Commission the sum received by said policeman from "said pension funds provided by municipal taxation," but instead certified to the Industrial Commission the full amount of the pension paid from all sources of revenue, and (2) where the award of workmen's compensation is made under paragraph (b) of Section 1465-80, General Code (Section 4123.57 (b), Revised Code), which, in effect, provides for payment of compensation to cover past, present and future disability of the degree then determined without regard to any impairment in earning capacity or actual earnings, which compensation clearly could have been paid to an injured policeman even though still employed and receiving his full pay.

Relator contended that Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code), contained an absolute prohibition against the Industrial Commission's making any award of compensation of any kind to a former policeman who is now the recipient of a police pension if the amount paid monthly as such pension is equal to or in excess of the amount paid monthly as such compensation, regardless of the nature of such compensation, and regardless of the source of revenue of such pension.

The respondent Commission contended that the language "and the sum or sums so paid to * * *" does not provide for deduction and certification of the full amount of a police pension but only such sums as are "provided by municipal taxation."

The relator conceded that it had certified only the full amount of Mr. Wilson's pension and that it would be impossible for it to breakdown his pension as to its source and it, therefore, could not certify the amount "provided by municipal taxation." It will be observed that the City of Columbus never at any time during the proceedings certified to the Industrial Commission of Ohio any amount other than the full amount of Wilson's pension. Nevertheless, the Supreme Court allowed the writ and ordered the Industrial Commission to vacate its order awarding Wilson compensation.

It should be noted, however, that the court held that "only that part of a pension actually provided by municipal taxation should be deducted from the amount of state compensation otherwise awardable to the claimant." The court held, nevertheless, that a breakdown as to sources of revenue providing the municipal pension was not necessary in the city's certification to the commission in this case since it was possible, by a simple comparison of the amounts involved (\$155.00 per month for life, as certified by the city; and \$30.00 per week for 62½ weeks), and by regard to the claimant's contributions to the municipal pension fund, to conclude that "the pension provided by taxation is larger than the award."

An application for rehearing was filed by the respondents. Said application was denied.

We must take the present state of the law to be that where a policeman is receiving a pension under the provisions of Section 4628 et seq., General Code (Section 741.49 et seq., Revised Code), and that portion thereof which is provided by municipal taxation is in excess of what he would receive as workmen's compensation, he is not entitled to a workmen's compensation award.

In answer to your first question, the provisions of Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code), are specific as to policemen or firemen eligible to participate in *any* policemen's or firemen's pension fund. Policemen or firemen may be retired on a pension based on disability or on length of service and age. The latter type pension contemplates that both age and length of service be taken in account and quite obviously comes within the scope of Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code).

Section 1465-80 (c), General Code (Section 4123.57 (c), Revised Code), provides for compensation for loss of a member and in substance specifies an amount to be paid for such loss. In the instance of the loss of a member, the legislature can fix the amount of disability which they determine a person has sustained when he loses an arm, for example, and can, therefore, in effect, specify the amount of compensation he is to receive for such disability. Where a person sustains a disability to his back, as provided for by paragraph (b) of said Section 1465-80, General Code (Section 4123.57 (b), Revised Code), the extent of his disability must be first determined by medical experts. After the extent of his disability is ascertained the amount of his compensation is fixed by law. Both paragraph (b)

and paragraph (c) of Section 1465-80, General Code (Section 4123.57 (b) and (c), Revised Code), provide compensation for disability and are, in my opinion, to be given no different consideration as far as the provisions of Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code), are concerned.

With respect to your second question compensation cannot be paid for a scheduled loss under the provisions of Section 1465-80 (c), General Code (Section 4123.57 (c), Revised Code), where the applicant for same is receiving a policeman's or fireman's pension where that portion of which provided by municipal taxation exceeds the amount of the compensation award.

Coming now to your third question, this can best be answered by a quotation from the case of *Industrial Commission v. Flynn*, 129 Ohio St., 220 (1935), wherein it was said:

“* * * It is the clear purpose of Section 1465-61 in its present form dating from July, 1931, to provide for injured firemen out of the State Insurance Fund to the extent they are not provided for out of any pension fund. So, under this section, if an injured fireman is paid less from a pension fund that he would get as an injured employee receiving compensation wholly from the State Insurance Fund, the difference is paid him from the State Insurance Fund.”

That language was cited and followed by the Supreme Court of Ohio in the *City of Columbus* case, *supra*. That would apparently apply equally whether compensation was sought under the provisions of paragraph (a) or paragraph (b) of Section 1465-80, General Code (Section 4123.57 (a) and (b), Revised Code). Certainly no distinction can be drawn from the language quoted above.

In answer to your fourth question, compensation for percentage of permanent partial disability is limited by the provisions of Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code), and by the decision in the *City of Columbus* case, *supra*, and is limited to the same extent as any other type of workmen's compensation award for reasons which I have heretofore stated.

I come now to your fifth question. The case to which you refer, *Brown v. Industrial Commission*, 34 Ohio Law Abs., 557 (1941), did, as you suggest, in effect hold that a policeman receiving a pension from

a policemen's and firemen's fund cannot be considered in the status of an employe within the meaning of the Workmen's Compensation Act. In that case, the Second District Court of Appeals said (559) :

"It will be noted that this section in defining the relationship of the policeman to the pension funds which will preclude the finding that he is in the status of an employe, under the Workmen's Compensation Act, is not limited to participation in such fund by reason of injury but is general in terms. That is to say, if a policeman is eligible to participate in policemen's pension funds, to the extent fixed in the Section, he may not be classified as an employe under the Workmen's Compensation Act, the Act does not apply to him, and because of this fact may not share in the compensation fund.* * *"

No reference was made in the opinion, however, to the case of Industrial Commission v. Flynn, *supra*, so we must assume that the Court of Appeals in the Brown case, *supra*, did not consider the holding of the Supreme Court in the Flynn case, *supra*. The Supreme Court's holding in the Flynn case, as stated in the first paragraph of the syllabus, was :

"When a regular member of a lawfully constituted fire department, under contract of hire, in a city which has established and maintains a firemen's pension fund under existing laws, is so seriously injured in the regular course of his employment that his death ensues almost instantly, his status as an employe at the time of his decease, under Section 1465-61, General Code, is to be determined on the basis of the rights of injured firemen as a class in such city to participate in its firemen's pension fund."

It must be conceded that injured policemen and firemen do not as a class participate in the pension funds. Certain requirements must be met before such participation. However, as is indicated by the first paragraph of the Flynn case, *supra*, his *rights* to participation in the pension funds are based on the rights of injured policemen and firemen as a class.

In the Flynn case, *supra*, which related to the rights of a dependent of an injured fireman, the City of Toledo maintained a firemen's pension fund supported through "municipal taxation," which would clearly make a situation as contemplated by Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code). The Supreme Court stated in the third paragraph of the syllabus that :

“Where in such city a regular member of its lawfully constituted fire department, under contract of hire, is so seriously injured in the regular course of his employment that his death ensues almost instantly, he is an employe within the provisions of Section 1465-61, General Code, * * *”

Based on the Flynn case, therefore, it is my opinion that policemen and firemen must be considered as employees within the meaning of the Workmen's Compensation Act.

There is no prohibition against an injured policeman or fireman receiving workmen's compensation benefits before his retirement on a pension. Certainly the fact that he is retired and is placed on a pension would not ab initio remove him from the classification of an employee within the Workmen's Compensation Act. Therefore, I must conclude that even under the present state of the law that firemen and policemen are employees within the meaning of the Act.

Your fifth query also raises the question of whether the term “regular state compensation” as used in Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code), comprehends amounts allowed for medical expense as provided in Section 1465-89, General Code (Section 4123.66, Revised Code). The principal decision bearing on this point appears to be *McHale v. Industrial Commission*, 63 Ohio App., 479, in which was said by Guernsey, J. (pp. 484, 485) :

“The word ‘compensation’ as used in Section 35 of Article II of the Constitution of Ohio, relating to workmen's compensation, comprehends all payments and disbursements of every character made by the Industrial Commission to or for the benefit of workmen and their dependents, for death, injuries or occupational diseases, occasioned in the course of such workmen's employment.

“Section 1465-78, General Code, a section of the Workmen's Compensation Act enacted pursuant to this constitutional provision, provides that no compensation shall be allowed for the first week after the injury is received, except the disbursement thereafter authorized in the act for medical, nurse and hospital services and medicines, and for funeral expenses.

“Reading this section in connection with the constitutional provisions mentioned, it is obvious that disbursements authorized by the Workmen's Compensation Act for medical, nurse and hospital services and medicines are comprehended in the word ‘compensation’ as used in the act. Consequently the payment to the attending physician, alleged in the petition in the instant

case, constituted a payment of compensation awarded on account of injury, within the meaning of Section 4165-86, General Code, as amended in 115 Ohio Laws, 423."

Although the statement appears in this decision that such amounts for medical expense "are comprehended in the word 'compensation' as used in the act" (emphasis added), such statement is clearly obiter for the reason that it was necessary only to decide that such was the scope of this term within the meaning of Section 1465-86, General Code (Section 4123.52, Revised Code); and that is precisely what the court held in the final sentence quoted above.

It seems evident that the court in the McHale case was giving a liberal construction to the act as is required in the case of welfare legislation, and in doing so decided that, as used in Section 1465-86, General Code (Section 4123.52, Revised Code), this term was employed in the generic sense to include all benefits of every character covered by the provisions of Section 35 of Article II of the Constitution.

I do not consider that this term is used in such generic sense in the instant case. In Section 1465-89, General Code (Section 4123.66, Revised Code), it will be seen that provision is made for medical expense payments "*in addition to the compensation* provided for herein." (Emphasis added) Thus, even though such payments may be regarded as falling within the term "compensation" as used in the generic sense, they nevertheless constitute "*additional*" compensation.

It will be seen, however, that Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code), refers to "*regular state compensation*," and I think it quite clear that such a restrictive expression could not possibly be regarded as equivalent in scope as we accorded the term "compensation" in the McHale case, supra. For this reason, and because of the necessity of according a liberal interpretation to welfare legislation to accomplish the evident benevolent purposes thereof, I am impelled to conclude that the amounts paid as medical expense under the provisions of Section 1465-89, General Code (Section 4123.66, Revised Code), are not comprehended in the expression "regular state compensation" as used in Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code), and such amounts of medical expense paid by the commission should be excluded in the determination of the eligibility of the applicant concerned.

In answer to your sixth question, if a fireman or policeman is not receiving a pension, he is without question entitled to receive the full amount of any workmen's compensation award, the same as any other employee entitled to workmen's compensation. On the date he is retired on a pension his status changes and it is only then that he can be said to come within the provisions of Section 1465.61, General Code (Sections 4123.01 and 4123.02, Revised Code), insofar as it pertains to firemen or policemen who are *eligible* to participate in a pension fund. Thereafter, that portion of his pension provided by municipal taxation must be deducted from his workmen's compensation award and if such portion of his pension is the greater, he can no longer receive workmen's compensation for a period beyond his retirement date except as to any amount accrued before his retirement.

My answer to your seventh question is in the affirmative. Certainly an employee's rights to compensation cannot be jeopardized because he chooses to file an application for same within a few days or weeks before the end of the statutory period for filing an application for compensation. Suppose for example that prior to October 5, 1955, a policeman and fireman are injured on the same day. The policeman files his application for compensation on the day of his injury and is awarded compensation. Both retire on the same day a year later. Two weeks before the two year statute of limitations has run, the fireman files his application for compensation and proves that he was disabled as a result of his injury from the day of his injury. They cannot, under any stretch of the imagination, be placed in a different category and the fireman would be entitled to that amount of compensation which had accrued before his retirement on a pension.

There is a more compelling reason why this is so. The case of *State, ex rel. Spiker, Admr. v. Industrial Commission*, 141 Ohio St., 174, held that compensation may accrue from the date of the injury and that compensation may be awarded for a period prior to the date when the application for same is filed. The *Spiker* case, *supra*, more specifically held that a dependent may recover the compensation of a decedent where said decedent would have been entitled to an accrued amount of workmen's compensation for which he had filed application during his lifetime but which had not been awarded on the day of his death. This indicates, of course, that accrued compensation may be paid at a date beyond which no further compensation can be received.

The eighth question presented has previously been answered in this opinion. On the basis of the City of Columbus case, *supra*, it is clear that only that part of a pension provided by municipal taxation is to be considered in determining whether the award of workmen's compensation is in excess of such policeman's or fireman's pension within the meaning of Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code).

It is realized, of course, that accounting problems of considerable magnitude may well be involved in the segregation of amounts of pensions paid under particular municipal pension systems as between the portions thereof provided by municipal taxation and those not so provided. Nevertheless, the plain import of the Columbus decision, *supra*, is that in cases where it cannot be said that there is "no accounting difficulty under the admitted allegations" it would be obligatory on the municipality concerned to make such segregation in its certification to the state agency. In view of the admitted difficulties involved it can be anticipated, in my opinion, that the court would not require that such segregation be made with too great a nicety but rather that any rule of separation evincing reasonable accuracy would be approved.

Accordingly, and in specific answer to your questions, it is my opinion and you are advised that:

1. The provisions of Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code), relating to the payment of compensation to policemen and firemen who are drawing a policeman's or firemen's pension applies to an award for partial disability under Section 1465-80 (b), General Code (Section 4123.57 (b), Revised Code), irrespective of whether said pension is based on retirement due to age and length of service or on disability. (*City of Columbus v. Industrial Commission*, 158 Ohio St., 240.)
2. Compensation for permanent partial disability under paragraph (c) of Section 1465-80, General Code (Section 4123.57 (c), Revised Code), may be paid to a policeman or fireman on pension for a scheduled loss under said section, but only to the extent that the award of compensation exceeds that portion of the amount of said policeman's or fireman's pension provided by municipal taxation.
3. The provisions of Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code), operate alike as to an award of compensation

for a percentage of permanent partial disability under paragraph (b) of Section 1465-80, General Code (Section 4123.57 (b), Revised Code), and as to an award for impairment in earning capacity under paragraph (a) of Section 1465-80, General Code (Section 4123.57 (a), Revised Code); and in each instance workmen's compensation can be paid to a policeman or fireman on pension only to the extent that the workmen's compensation award exceeds that portion of such pension provided by municipal taxation. (*Industrial Commission v. Flynn*, 129 Ohio St., 220.)

4. A policeman or fireman injured while employed as such is an employee within the meaning of the Workmen's Compensation Act; and his status as such is not affected by the fact that he is retired on a policeman's or fireman's pension insofar as any determination of his rights to compensation arising from said injury are concerned.

5. A policeman or fireman participating in a police or fireman's pension fund and receiving more benefits from such fund than he could from regular state compensation is not thereby eliminated from classification as an employee under the provisions of Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code). The medical benefits provided by Section 1465-89, General Code (Section 4123.66, Revised Code), are in addition to the "regular state compensation" to which reference is made in Section 1465-61, General Code (Sections 4123.01 and 4123.02, Revised Code), and the amount of such additional benefits should not be considered as a part of such "regular state compensation" in the determination, under the provisions of such latter section, of the comparative amounts of (1) regular state compensation and (2) sums received from pension funds provided by municipal taxation.

6. An award of compensation to a policeman or fireman which extends through a period beyond his retirement on a policeman's or fireman's pension must be reduced on the day of said retirement so that the award after said date is not in excess of the amount by which the original award exceeds that portion of such pension provided by municipal taxation.

7. Where an application for compensation is filed by a claimant receiving a policemen's or firemen's pension and said application is filed after the date of his retirement alleging an injury sustained in the course of his employment as a policeman or fireman, an award may be made for

the full amount of compensation which is determined to have accrued before retirement.

Respectfully,
C. WILLIAM O'NEILL
Attorney General