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1. "REINSTATEMENT" ACCORDING TO 741.49, R.C., MEANS REINSTATEMENT, RE-EMPLOYMENT OR RENEWAL OF MEMBERSHIP BY LAWFUL MEANS AND NOT LIMITED TO MEANING OF 143.35, R. C.—

2. PATROLMEN WHO RESIGNED AS OF MARCH 31, 1955, WITHDRAWING MONEY FROM POLICE RELIEF AND PENSION FUND, BUT RE-EMPLOYED IN POLICE DEPARTMENT AFTER TAKING CIVIL SERVICE EXAMS—SUCH RE-EMPLOYMENT AMOUNTS TO "REINSTATEMENT IN ACTIVE SERVICE IN POLICE DEPT." ACCORDING TO 741.49, R. C.— §§741.49, 143.35, R.C.

SYLLABUS:

1. The word "reinstatement" as used in the last paragraph of Section 741.49, Revised Code, means reinstatement, re-employment or renewal of membership by any lawful means and is not limited to reinstatement in accordance with Section 143.35, Revised Code.

2. Where a patrolman has resigned his position in the police department as of March 31, 1955 and withdrawn his contributions in the police relief and pension fund and is subsequently re-employed in the same police department after taking the necessary civil service examinations, such re-employment amounts to "reinstatement to active service in the police department" as said phrase is used in the last paragraph of Section 741.49, Revised Code.

Columbus, Ohio, August 7, 1961

Hon. Robert L. Marrs, Prosecuting Attorney  
Butler County, Hamilton, Ohio

Dear Sir:

I have your request for my opinion signed by William E. Rathman, Assistant County Prosecutor, on your behalf, which reads as follows:

"This office has been requested to obtain an Attorney General's opinion on the following matter:

"If a patrolman in the Middletown Division of Police, who resigned his position on May 31, 1955, and several years later on December 4, 1957, was re-employed as a patrolman after Civil Service examination, may he deposit in the Police Relief and Pension Fund a sum equal to that received on his resignation and thus be reinstated to his rights as to years of service?"

“The question evidently arises by virtue of the last paragraph of Section 741.49, Ohio Revised Code (the officer being subject to the statutory rules governing the Fund), which reads as follows:

“ ‘A member of the fund who voluntarily resigns from active service in the police department and receives from the police relief and pension fund, pursuant to the provisions of paragraph (I) of this section, an amount equal to the sums deducted from his salary *upon reinstatement* to active service in the police department shall not be entitled to receive any benefits or pensions from the police relief and pension fund until he has deposited in said fund an amount equal to the sum so received by him.’

“The chief problem in answering the question concerns the meaning of ‘reinstatement’ used in the above-quoted paragraph. In Section 143.35, Ohio Revised Code, is found the following:

“ ‘Any person holding an office or position under the classified service in a fire department or a police department, who resigns therefrom, may *be reinstated* to the rank of fireman or policeman, upon the filing of a written application for reinstatement with the municipal civil service commission of the city in which such fire department or police department is located, and a copy thereof with the chief of the fire department or chief of the police department, and upon passing a physical examination disclosing that said person is physically fit to perform duties of the office of fireman or policeman, said application for *reinstatement* shall be filed *within one year from the date of resignation*. Any person *reinstated* pursuant to the authority of this paragraph shall not receive credit for seniority earned prior to *resignation and reinstatement*, and shall not be entitled to *reinstatement* to a position above the rank of fireman or patrolman, regardless of the position said person may have held at the time of his resignation.

“Your opinion on this matter will be greatly appreciated.”

Since the pertinent provisions of Section 741.49, Revised Code, and Section 143.35, Revised Code, are set forth in your request, they will not be restated herein. It is, of course, apparent that the policeman involved in this question was not “reinstated” in accordance with the provisions of Section 143.35, Revised Code, nor could he have been so reinstated since he was not re-employed within one year of the time he resigned his position as a patrolman. The question to be determined, therefore, is whether the phrase “reinstatement to active service in the police department” as used in the last paragraph of Section 741.49, Revised Code,

quoted in your letter, is limited to a reinstatement in accordance with the provisions of Section 143.35, *supra*. I have been unable to find any express statutory definition of the word "reinstatement" as used in the last paragraph of Section 741.49, Revised Code.

In interpreting the meaning of the law in question herein, we should be mindful of the statement of Judge Learned Hand who said in the case of *Cabell v. Markham*, 148 F. 2d, 737 at page 739:

"\* \* \* But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or objects to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning. \* \* \*"

The last paragraph of Section 741.49, Revised Code, was considered by the Supreme Court of Ohio in the case of *State, ex rel. Bailey, Sr. v. Board of Trustees of Toledo Police Relief and Pension Fund, et al*, 169 Ohio St., 1. The facts in that case indicate that the relator therein re-entered the police department on August 1, 1945 under the protection of Section 486-16a, General Code. (The provisions of Section 486-16a, General Code, are now found in Section 143.22, Revised Code.) While the court did not specifically determine the meaning to be placed upon the word "reinstatement" as used in the last paragraph of Section 741.49, Revised Code, it is apparent from the decision of the Bailey case, *supra*, that said word was not therein limited to the reinstatement in accordance with the provisions of Section 143.35, Revised Code. In speaking of the last paragraph of Section 741.49, the court said at page 9 in its decision in the Bailey case, *supra*:

"\* \* \* This type of provision is contained in practically all retirement systems unrelated to questions of military service credits or minimum periods required for retirement. Generally, such statutes are drawn to require repayment to the funds of the respective systems, upon reinstatement of such employees to active service of any amounts which were previously withdrawn by such employees at the time of earlier separation from employment."

A member of the Public Employees Retirement System who has withdrawn his contributions may, upon being re-employed to service covered by that System, restore his earlier service credit which was lost when he received the refund of his accumulated contributions. Section 145.31, Revised Code. Similar provisions are made for teachers who are

members of the State Teachers Retirement System and for members of the School Employees Retirement System. Sections 3307.28, Revised Code and 3309.26, Revised Code. The restoration provisions of these Retirement Systems are not limited by a provision that reinstatement or re-employment or a renewal of membership therein must be made in a peculiar or particular fashion.

In light of the court's statement in the *Bailey* case, *supra*, I am of the opinion that the phrase "reinstatement to active service in the police department" as used in the last paragraph of Section 741.49, Revised Code, was not meant to be limited to reinstatement in accordance with the provisions of Section 143.35, Revised Code, but that said statement, in line with the legislative policy adopted in other Retirement Systems in the state, should be construed to mean reinstatement, re-employment or a renewal of membership by any lawful means.

In accordance with the above, it is my opinion and you are advised:

1. The word "reinstatement" as used in the last paragraph of Section 741.49, Revised Code, means reinstatement, re-employment or renewal of membership by any lawful means and is not limited to reinstatement in accordance with Section 143.35, Revised Code.

2. Where a patrolman has resigned his position in the police department as of March 31, 1955 and withdrawn his contributions in the police relief and pension fund and is subsequently re-employed in the same police department after taking the necessary civil service examinations, such re-employment amounts to "reinstatement to active service in the police department" as said phrase is used in the last paragraph of Section 741.49, Revised Code.

Respectfully,

MARK McELROY

Attorney General