

1. POLICE RELIEF AND PENSION FUND—COMPUTATION OF AMOUNT OR DISABILITY ALLOWANCE DUE UNDER PARAGRAPHS 1 AND 2 OF SECTION 4628 G. C.—PROPER FOR TRUSTEES TO USE NUMBER OF YEARS AND FRACTIONAL PARTS OF YEAR OF ACTIVE SERVICE.
2. DETERMINATION, AMOUNT OF PENSION OR DISABILITY ALLOWANCE DUE MEMBER OF POLICE RELIEF AND PENSION FUND—ONLY FULL YEARS OF ACTIVE SERVICE SHOULD BE CONSIDERED—SECTION 4628, PARAGRAPHS 3, 4 G. C.

SYLLABUS:

1. Under the provisions of Section 4628, General Code, it is proper for the trustees of the police relief and pension fund to use the number of years and fractional parts of a year of active service in computing the amount of pension or disability allowance due a member under authority of paragraphs 1 and 2 of said section.

2. In determining the amount of pension or disability allowance due a member of such fund under paragraphs 3 and 4 of Section 4628, General Code, only full years of active service should be considered.

Columbus, Ohio, November 14, 1951

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have your request for my opinion, which reads as follows:

“A question has arisen in connection with the examination of the cities of T. and Y. which requires the interpretation of certain provisions of Section 4628, General Code, pertaining to the allowance of pensions under the laws governing a municipal Police Relief and Pension Fund. Enclosed herewith are copies of correspondence received from our examiners in T. and Y. in regard to the proper method to be used in computing ‘years of service’ credit to which a member is entitled for the purpose of determining such member’s pension in accordance with the provisions of paragraphs Nos. 1 and 2 of Section 4628, General Code.

“It will be noted by reference to Section 4628, G. C., paragraphs Nos. 1 and 2, the Legislature used the phrase ‘number of

years said member was in active service', while in paragraphs Nos. 3 and 4, the words 'number of full years said member was in active service' were used.

"Please examine the statutes governing Police Relief and Pension funds together with the data herewith submitted, and give us your formal opinion answer to the following questions :

"1. Under the provisions of Sec. 4628, G. C., is it proper for the board of trustees of a Police Relief and Pension fund to use fractional parts of a year of active service in computing the amount of annual pension due a member under authority of paragraphs Nos. 1 and 2, of said statute?

"2. Is the board of trustees of said fund required to use only *full years of active service* in determining the amount of disability pension due a member under authority of paragraphs Nos. 3 and 4 of said section?"

Section 4628, General Code, to which your letter refers, reads in part as follows :

"* * * 1. A member of the fund, who *has completed twenty-five years of active service* in the police department and has attained fifty-two years of age may, at his election, retire from the police department and upon notifying the trustees in writing of such election, shall receive an annual pension, payable in twelve monthly installments, in an amount equal to *two per cent* of his average annual salary for the *five year period* immediately preceding the date of his retirement *multiplied by the number of years* said member was in the active service of said police department or an annual pension of twelve hundred dollars, whichever is the greater, provided, however, such annual pension shall not exceed sixty-six per cent of the member's average annual salary for the five year period immediately preceding the date of his retirement.

"2. A member of the fund, who is permanently and totally disabled as a result of the performance of his official duties as a member of the police department, shall be paid annual disability benefits until death, payable in twelve monthly installments, in an amount equal to sixty-six per cent of his annual salary for the last year he was in the active service of the police department.

"A member of the fund, who is partially disabled as a result of the performance of his official duties as a member of the police department and such disability prevents him from performing his official duties as a member of the police department and impairs his earning capacity, shall be paid monthly disability benefits in an amount to be fixed by the trustees. The trustees may increase or decrease such monthly benefits whenever in their opinion the

impairment in the member's earning capacity warrants an increase or decrease but in no event shall a monthly benefit paid to such member exceed fifty per cent of the member's average monthly salary for the last year he was in the active service of the police department, provided, however, each such member who has completed twenty-five or more years of active service in the police department shall receive annual disability benefits payable in twelve monthly installments, in an amount equal to *two per cent* of his average annual salary for the five year period immediately preceding the date of his separation from active service *multiplied by the number of years* said member was in the active service of said police department, or an annual pension of twelve hundred dollars, whichever is the greater, provided, further, such annual pension shall not exceed sixty-six per cent of the member's average annual salary for the five years immediately preceding the date of his separation from active service in the police department.

"3. A member of the fund, who has completed *five or more years of active service* in the police department and has incurred disability not caused or induced by the actual performance of his official duties as a member of the police department or by his own negligence, and such disability prevents him from performing his official duties as a member of the police department and impairs his earning capacity, shall receive monthly benefits in an amount to be fixed by the trustees. The trustees may increase or decrease such monthly benefits whenever in their opinion the impairment in the member's earning capacity warrants an increase or decrease, but in no event shall a monthly benefit be paid to such member exceed *two per cent* of the member's average monthly salary for the last five years he was in the active service of the police department *multiplied by the number of full years* said member was in the active service of the police department or fifty per cent of said average monthly salary, whichever is the smaller.

"4. A member of the fund, who has served *fifteen or more years* as an active member of the police department and who is discharged from such department for any reason other than dishonesty, cowardice, intemperate habits or conviction of a felony, shall receive an annual pension, payable in twelve monthly installments, in an amount equal to *one and one-half per cent* of his average annual salary for the five year period immediately preceding his discharge from the police department *multiplied by the number of full years* said member was in the active service of said police department, provided, however, such pension payments shall not commence until such member has attained the age of fifty-two years and twenty-five years have elapsed from the date on which he became a full time regular policeman in said police department. * * *"

(Emphasis added.)

Your question appears to turn on the intended meaning of the word "year," as used in paragraphs 1 and 2, of this section, and the words "full years," as used in paragraphs 3 and 4. At the outset, we may dismiss the idea that these words in either case mean the calendar year, to wit, beginning January 1 and ending December 31. It is true that the word "year," as used in the statutes, where there is nothing in the context or the manifest purpose of the statute to indicate another meaning, is generally taken to import a calendar year. Many cases support that proposition. However, it is very well settled that the word means merely a period of twelve months in all cases where the context or the obvious plan of a statute calls for such interpretation. *Muse v. London Assurance Corporation*, 108 N. C., 240; *Knodel v. Baldrige*, 73 Ind., 54; *United States v. Dixon*, 40 U. S., 141. This is illustrated by the many statutes which fix the beginning of the terms of public officers at some other date than January 1.

That such is the only reasonable interpretation that can be given to this word as used in this statute relating to the police pension system is manifest from the fact that policemen are not appointed for a term beginning at any particular time of the year, and their period of service must necessarily be measured from the time when they are appointed and their service begins.

Referring especially to paragraph 1 of the statute quoted, we note at the outset that it deals with a member of the fund who has completed twenty-five years of active service in the police department. There is no difficulty in understanding this provision. If, for instance, a member had begun service in the police department on the 12th day of September, 1925, and continued in active service thereafter, he would complete such period of active service on the 11th day of September, 1950, and thereafter would be entitled to the benefits of the section in question, as having completed twenty-five years or more of active service. Likewise, the provision relative to 2% of his average salary for the *five year period* immediately preceding the date of his retirement, offers no difficulty, because the five year period would be easily ascertainable.

When it comes to the mathematical computation whereby in determining the amount of his annual pension 2% of his average salary for the five year period is to be multiplied by the "number of years said member was in the active service," we encounter the first question calling for interpretation. If the member has completed an even thirty years, obviously

we would multiply the 2% by 30. If he has completed twenty-nine years and nine months, it appears to me that the conclusion is inescapable that we should multiply the 2% by $29\frac{3}{4}$; in other words, give him the benefit of his years and fraction of a year of active service. There is a suggestion in the correspondence attached to your letter that some pension boards have been assuming that if there is a fraction of a year of more than six months, they have authority to consider that fraction as an additional year. I can see no basis for that assumption, because six months was never a year and is never to be considered a year in applying a statute unless the law expressly authorizes it.

What has been said will apply equally to the pension provided in paragraph 2 of the statute in question, where a member is partially disabled as a result of the performance of his official duties as a member of the police department. If he has completed twenty-five or more years of service, he is entitled to annual disability benefits in the amount of 2% of his average salary for the five year period, multiplied by the number of years and fractions of a year said member was in the active service of said police department.

When we come to paragraphs 3 and 4, of the statute in question, we encounter different language in the formula for computing the pension or disability allowance. Here, the factor by which the percentage is to be multiplied is not the number of "years" but the number of "full years." Where the service has extended over a period of $15\frac{3}{4}$ years, it could not be said that within that period there were more than fifteen full years, and no authority is found to multiply by $15\frac{3}{4}$ years as was intended in paragraphs 1 and 2.

We must ascribe to the general assembly some purpose in employing these different phrases in fixing the basis on which these pensions and allowances are to be computed. It is evident that paragraph 1 is intended to provide a reward for long continued service, and paragraph 2 is intended to afford relief for men who have been permanently disabled by the performance of their dangerous duties, whereas, paragraphs 3 and 4 deal in the one case with an officer who has suffered a disability entirely outside his service duties, and in the other with one who has been discharged from the department for some reason other than those named, and has not to his credit the long period which entitles him to the maximum pension benefits. I therefore conclude that the difference in the language

as to these classes within paragraphs 1 and 2, as against those falling in paragraphs 3 and 4, is reasonably explained on the theory that the legislature intended to be more generous in providing for those persons mentioned in paragraphs 1 and 2, than for those in paragraphs 3 and 4.

In specific answer to the questions which you have submitted, it is my opinion :

1. Under the provisions of Section 4628, General Code, it is proper for the trustees of the police relief and pension fund to use the number of years and fractional parts of a year of active service in computing the amount of pension or disability allowance due a member under authority of paragraphs 1 and 2 of said section.

2. In determining the amount of pension or disability allowance due a member of such fund under paragraphs 3 and 4 of Section 4628, General Code, only full years of active service should be considered.

Respectfully,

C. WILLIAM O'NEILL
Attorney General