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RETIREMENT SYSTEM, PUBLIC EMPLOYEES — MEMBERS WHO, PRIOR TO JANUARY 1, 1942, WERE STATE EMPLOYEES IN CONNECTION WITH STATE EMPLOYMENT SERVICE AND WHO TRANSFERRED SERVICE TO UNITED STATES GOVERNMENT—MEMBERSHIP RELINQUISHED THROUGH WITHDRAWAL OF ACCUMULATED CONTRIBUTIONS — UPON RETURN TO STATE SERVICE AND IN EMPLOYMENT MORE THAN SIXTY DAYS, MEMBERS MAY NOT RESTORE TO PUBLIC EMPLOYEES SAVINGS FUND ACCUMULATED CONTRIBUTIONS PREVIOUSLY WITHDRAWN — SECTION 486-65b G. C.—HOUSE BILL 356, 96th GENERAL ASSEMBLY.

SYLLABUS:

Former members of the Public Employes Retirement System who, prior to January 1, 1942, were employed by the state in connection with the State Employment Service, and who, upon the transfer of such service to the United States Government, relinquished their membership in said System through withdrawal of their accumulated contributions, may not, if they have returned to the service of the state and have since their return been in such service for a period of more than sixty days, restore, under the authority of Section 486-65b, General Code, to the Public Employes Savings Fund the accumulated contributions previously withdrawn by them.

Columbus, Ohio, April 8, 1947

Mr. Fred L. Schneider, Secretary, Public Employes Retirement System
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“At a special meeting of the Retirement Board on March 21, the Secretary was requested to secure from your office an opinion relating to House Bill No. 356 enacted by the Ninety-sixth General Assembly.

While this Bill was passed by the General Assembly late in June, 1945, it was vetoed by the Governor apparently on July 18 and returned to the House of Representatives on July 19. However it now develops that the veto of the Governor was in-

effective since the Bill was not returned to the House of Representatives within the statutory ten day period (please see your informal opinion, number 146).

The question in which the Board is interested involves the last sentence in paragraph one of Section 1. At present Section 486-57, General Code, provides that former members of the System who leave public service and withdraw their accumulated savings contributions and who return to public service within five years, may redeposit the amount withdrawn, and thus restore the forfeited annuity rights. In Attorney General Opinion No. 447 dated September 17, 1945, it was held that the member must both return to service and repay the amount withdrawn with interest to have the annuity rights restored. The Employment Service was returned to the State of Ohio by the Federal Government on or about November 16, 1946, therefore the sixty days referred to in the last sentence of paragraph one of Section 1 of House Bill No. 356 apparently would expire on or about January 15, 1947. However, we understand that House Bill No. 356 did not become effective until on or about March 12, 1947.

Our question is this: Would a member whose period of five years since the date of refund, expired on, before, or shortly after the expiration date of House Bill No. 356 be permitted to make the redeposit of funds at any time within sixty days of the effective date of the Act?"

In order that a complete understanding of the unusual situation existing with respect to the provisions of and the effective date of the bill in question may be had, it is felt that the history thereof should be set out.

House Bill No. 356 of the 96th General Assembly, after having passed both houses of the General Assembly, was, on July 6, 1945, presented to the Governor for his approval or disapproval. On July 19, 1945, at 2:55 P. M., said bill, together with the Governor's veto message with respect thereto, was returned to the Clerk of the House of Representatives. Said official, presumably in doubt as to his duty in the premises, accepted said bill and, from said date until December 10, 1946 when it was filed in the office of the Secretary of State, the same remained in the office of the Clerk of the House of Representatives.

On the same date and at the same time the above bill was returned to the Clerk of the House of Representatives, there was also returned to that official from the Governor's office a copy of Item No. 3 of Amended House Bill No. 485 of the 96th General Assembly, along with the Governor's veto message regarding said item. Said House Bill No. 485

was presented to the Governor for his approval or disapproval on the same date as House Bill No. 356 was presented to the Governor for such purpose.

On October 9, 1945, in Opinion No. 496 (Opinions of the Attorney General for 1945, page 642), I held:

“Where an item in a bill making an appropriation of money was disapproved by the governor, and a copy of such item with his objections in writing was delivered to the House in which such bill originated, on the eleventh day following the day on which such bill was presented to him, the attempted veto of the governor was ineffective and such item, on the expiration of the tenth day following the day of presentation of such bill to the governor, became law.”

Therefore, since the facts concerning the enactment of House Bill No. 356 are identical with those considered in the above mentioned opinion, I held in my Informal Opinion No. 146, referred to in your letter, that the attempted veto of the Governor of said bill was ineffective and that the same became law immediately after midnight of July 18, 1945.

House Bill No. 356 was, as stated above, filed in the office of Secretary of State on December 10, 1946. In Section 1c of Article II of the Constitution of Ohio it is provided that no law passed by the General Assembly shall go into effect until ninety days after it shall have been filed in the office of the Secretary of State. In view of this provision the act in question did not become effective until March 12, 1947. Said act, now codified as Section 486-65b of the General Code, reads:

“Members of the public employes retirement system on leave of absence as provided in section 486-65a of the General Code, who are covered in Sections 1345-13a and 1345-13b of the General Code, or who are employes of the United States Employment Service at the time of the return of these functions to the state, or who reach retirement age prior to this date, or who return to the state service prior to the return of the employment service, may be permitted to pay into the retirement fund the amount, with interest, they would have paid through deductions, had they continued as contributing members during the period on leave of absence, and be reinstated as active members with all prior service rights. Those who withdrew their accumulated contributions from the retirement system at the time of their separation from the state service, may, within sixty days after their return to the state service from the United States Employment Service, restore

to the retirement fund such accumulated contributions with interest, as provided in Section 486-57 of the General Code, and thereafter be entitled to all the benefits of this act."

Since your question concerns only the provisions set out in the last sentence of the above section, I shall confine my attention thereto.

As stated in your letter, the Employment Service was returned to the state on November 16, 1946. Therefore, assuming that the affected employes returned to the employment of the State of Ohio upon the return of such Employment Service to the state, the sixty day period referred to in the act expired before the act became effective. We are, consequently, confronted with the anomalous situation where a right clearly intended to be given under the act can not be exercised because the time during which action had to be taken in order to exercise such right before the law granting it became effective. In other words, during the sixty day period immediately following the return of the former members of the Retirement System to the state service there was no law in effect granting them the rights conferred by Section 486-65b, General Code, and consequently, since said section limits the time for the exercise of the rights conferred under it to a period which has elapsed before the effective date of the section, the accomplishment of its object becomes impossible. In view of this, there seems to be no means of escape from the situation other than to declare the part of the statute here under consideration inpotent as an operating force to grant the right set out therein.

It should be pointed out, however, that former members of the Retirement System, who were employed by the state in connection with the State Employment Service and who, upon the transfer of such service to the United States Government, relinquished their membership in the System through withdrawal of their accumulated contributions, could, upon their return to the state service in November, 1946, have availed themselves of the benefits of the act notwithstanding the fact that the last sentence thereof is ineffective.

As you point out in your letter, a former member of the System who has left the state service and withdrawn his accumulated contributions may, under the terms of Section 486-57, General Code, restore to the Employees Savings Fund such withdrawn contributions, with interest, upon his return to the state service within five years and thereupon be restored to the annuity rights forfeited by him at the time of such withdrawal.

The State Employment Service was transferred to the United States Government on January 1, 1942, pursuant to executive orders of the President of the United States, Nos. 8990 and 9008. Therefore, all employes who left the state service and entered the employ of the United States Government by reason of such transfer did so on or shortly after said date. Since the Employment Service was, as above stated, returned to the state on November 16, 1946, there remained approximately six weeks of the five year period during which any former members of the Retirement System, who had withdrawn their contributions, could have repaid the same and thereby become eligible to the benefits of the act.

However, in any case where a returned employe has not, during the five year period following the withdrawal of his accumulated contributions, restored the same in accordance with the terms of Section 486-57, General Code, it would appear that it is now too late to do so inasmuch as the rights with respect thereto, given by Section 486-65b, General Code, can no longer be exercised by an employe who has worked for the state more than sixty days since his return from the federal service.

Therefore, in specific answer to your question, you are advised that, in my opinion, the provisions of Section 486-65b of the General Code, which permit the restoration of accumulated contributions previously withdrawn by certain former members of the Public Employes Retirement System, referred to therein, are without any force and effect as to any such former members who have returned to the state service and have, since their return, been in such service for a period of more than sixty days.

Respectfully,

HUGH S. JENKINS,
Attorney General.