

transcript relative to this issue was approved by this office in an opinion rendered to your Board under date of April 15, 1937, being Opinion No. 464.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

976.

BUREAU UNEMPLOYMENT COMPENSATION—MONEYS REQUIRED TO BE PAID OUT OF ADMINISTRATIVE FUND OF BUREAU TO PUBLIC EMPLOYES' RETIREMENT SYSTEM—COVERAGE—EMPLOYES—SECTION 1345-3 G. C.—FEDERAL SOCIAL SECURITY BOARD.

SYLLABUS:

Moneys required to be paid by the Bureau of Unemployment Compensation to the Public Employes' Retirement System to cover the employes of such Bureau, are required, under the laws, to be paid out of the administrative fund of the Bureau created under the provisions of Section 1345-3 of the General Code.

COLUMBUS, OHIO, August 2, 1939.

HON. HERSCHEL C. ATKINSON, *Administrator, Bureau of Unemployment Compensation, Columbus, Ohio.*

DEAR SIR: I have your letter of July 25, 1939, requesting my opinion, which letter reads as follows:

"The Public Employees Retirement System has made a demand on this Bureau for payment of contributions due the State of Ohio Public Employees Retirement Fund on our employes.

Sections 486-68a and 486-68d provide the money in which contributions for the Public Employment fund on behalf of State Employees are to be paid. The Retirement Board contends that the State's portion of the contributions of our employes is a necessary part of our Administration as provided by the Ohio General Code—Section 1345-5 and, therefore, the contributions should be paid out of our Administrative fund. Section 1345-3 requires that all money in our Administrative fund shall be expended solely for the purpose of defraying the cost of the administration of the Unemployment Compensation act and for no other purpose whatsoever.

In view of the provisions of the Ohio General Code, is the Administrator of the Bureau required to pay the contributions requested by the State Employees Retirement Board out of its administrative funds?

For your information, we are attaching herewith a copy of the action taken by the Social Security Board on June 6, 1939, outlining the policy to be followed in granting funds under Title III of the Social Security Act to meet Expenses Incident to State's Contributions to Workmen's Compensation and State Retirement Funds.

The amount of money involved for the first six months of 1939 is approximately \$58,000.00. The Social Security Board has held in abeyance our requests for funds with which to pay these contributions until they were able to decide on the policy and have suggested that we request an opinion from your office in respect to the question as to whether the State contributions referred to may lawfully be paid out of the Administrative funds."

The enclosure referred to in the fourth paragraph of your letter, which outlines the policy of the Federal Social Security Board to be followed in granting funds under Title III of the Social Security Act, reads:

"Action taken by the Social Security Board on June 6, 1939, outlining policy to be followed in granting funds under Title III of the Social Security Act to meet expenses incident to states' contributions to Workmen's Compensation and State Retirement Funds.

The Board will consider as necessary for the proper administration of a State unemployment compensation law the payment of the State unemployment compensation agency's proper share of the cost of protecting its employees under State retirement funds and Workmen's Compensation laws, if it finds:

(a) That the State law is compulsory in its application to the employees of the agency, or that in the case of a law which is elective, an effective election has been made and that the State or agency is by law required to pay a part or all of the cost of the protection furnished to the employees of the agency.

(b) That where such payment takes the form of a contribution to a State fund or of premiums for insurance, the State fund or the proceeds of such insurance may be used solely for the payment of benefits or compensation to employees entitled thereto under the law and may not be diverted to other State uses.

(c) That the rate of contribution is calculated on the same

basis for all State agencies, or, if more than one basis is authorized under the laws of the State, the basis of calculation for the unemployment compensation agency is fair and reasonable as compared with that for other State agencies.

(d) That if any charge for administrative costs of the retirement or workmen's compensation system is made, such charge is required by the State law and is made against all agencies whose employees are covered by the State law.

(e) That the proposed payments may lawfully be paid under State statutes from the administration fund."

The "State Unemployment Compensation Fund" and the "State Unemployment Compensation Administration Fund" are respectively created by Sections 1345-2 and 1345-3 of the General Code, which read in part as follows:

Sec. 1345-2. "There is hereby created an unemployment compensation fund (hereinafter called the unemployment fund), to be administered by the state of Ohio, without liability on the part of the state beyond the amounts paid into the fund and earned by the fund. This unemployment fund shall consist of all contributions collected under this act, together with any interest thereon collected pursuant to this act, all fines and penalties collected pursuant to provisions of this act, all interest earned upon any moneys in the fund, any property or securities acquired through the use of moneys belonging to the fund, and all earnings of such property or securities. The unemployment fund shall be used to pay benefits and refunds as provided by this act and for no other purpose.

* * *

Sec. 1345-3. "(a) There is hereby created in the state treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the *bureau of unemployment compensation*. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this act, and for no other purpose whatsoever. The fund shall consist of all moneys appropriated by this state, and all moneys received from the United States of America, or any agency thereof, including the social security board, the *railroad retirement board* and the United States employment service, or from any other source, for such purpose, *except that moneys received from the railroad retirement board as compensation for services or facilities supplied to said board shall be paid into this fund or the special 'employ-*

ment service account' thereof, on the same basis as expenditures are made for such services or facilities from such fund and account. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the bureau of unemployment compensation for expenditure consistent with this act. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration fund. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under section 2 of this act, shall be paid from the moneys in the unemployment compensation administration fund.

(b) A special 'employment service account' shall be maintained as a part of the unemployment compensation administration fund for the purpose of maintaining the public employment offices established pursuant to section 15 of this act and for the purpose of cooperation with the United States employment service." (Italics ours.)

Sections 1345-2 and 1345-3, General Code, were each amended by the 93rd General Assembly, the changes being indicated by the words above emphasized. In so far as your question is concerned, however, these amendments are not material.

The act and amendments thereto creating and making provision for the Public Employes Retirement System are codified as Sections 486-32 to 486-75, inclusive, of the General Code of Ohio.

In addition to Sections 486-68a and 486-68d, General Code, referred to in your letter, Sections 486-32, 486-33, 486-51 and 486-69 are pertinent.

By Section 486-32, a state employe is defined as "any person holding a state office, not elective, under the state of Ohio and/or paid in whole or in part by the state of Ohio, in any capacity whatsoever", persons coming within the provisions of the State Teachers Retirement System, however, being excepted.

Section 486-33 reads:

"A state employes retirement system is hereby created for the employes of the state of Ohio. Membership in the state employes retirement system shall be compulsory and shall consist of all state employes, either as original members or as new members upon being regularly appointed. Provided, however, that any original member may be exempted from membership by filing written application for such exemption with the retirement

board within three months after this act goes into effect; and any new member over the age of fifty years may be exempted from membership by filing written application for exemption with the retirement board within three months after being regularly appointed as a state employe. And provided further, that the board shall have authority to exempt from compulsory membership in the retirement system, classes or groups of employes engaged in work of a temporary, casual, or exceptional nature, but individuals in any such class or group so exempted may become members by making application therefor, subject to the approval of the retirement board; provided, however, that any employe who is, or who becomes, a member must continue such membership as long as he is a state employe, even though he may be in or transferred to an exempted class or group."

Section 486-51, General Code, provides in part as follows:

"The funds hereby created are the employes' savings fund, the employers accumulation fund, the annuity and pension reserve fund, the income fund and the expense fund.

* * *

* * *

* * *

(e) The expense fund shall be the fund from which shall be paid the expenses of the administration of this act, exclusive of amounts payable as retirement allowances and as other benefits as provided in this act."

Sections 486-68a and 486-68d, respectively, provide:

Sec. 486-68a. "Beginning January 1, 1939, the state of Ohio, as employer, shall pay to the employer's accumulation fund a certain per centum of the compensation of each employe member to be known as the 'normal contribution' and a further per centum of the earnable compensation of each such member to be known as the 'deficiency contribution.' The rates per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system and shall be certified to the director of finance, and to the heads of the various departments, by the retirement board after each actuarial valuation. Beginning January 1, 1938, and until January 1, 1939, the state shall pay to the retirement board into such funds as the board may designate, an amount not exceeding one and twenty-five hundredths per centum of the earnable salary or compensation of each employe member, as may be certified by the retirement board. In computing the state's contribution as herein provided, the amount

of a contributor's earnable salary or compensation in excess of two thousand dollars per annum shall not be considered."

Sec. 486-68d. "On and after January 1, 1939, the state shall pay into the employer's accumulation fund, in such monthly or less frequent installments as the retirement board shall require, an amount certified by the retirement board which shall equal the per centum of the total compensation, earnable by all contributors during the preceding year, which is the sum of the two rates per centum hereinbefore described and required to be computed, to-wit, the sum of the normal contribution rate plus the deficiency contribution rate. The aggregate of all such payments by the state shall be sufficient, when combined with the amount in the employer's accumulation fund, to provide the pensions payable out of the fund during the year then current, and if not, the additional amount so required shall be collected by means of an increased rate per centum of the deficiency contribution which shall be certified to the state by the retirement board and shall continue in force for the period of one year."

While the last two sections above quoted were amended by the 93rd General Assembly in Amended Senate Bill No. 323, since this act will not become effective until August 31, 1939, and since the amendments are in no wise material to your question, the sections as they now exist are quoted herein.

Section 486-69 was also amended by the 93rd General Assembly in Amended Senate Bill No. 54, passed as an emergency measure, and effective on June 30, 1939. This section reads:

"The retirement board shall estimate annually the amount required to defray the expenses of the administration of this act in the ensuing year. The retirement board shall apportion the amount so estimated in equal amounts among the contributors, such amounts to be in addition to the deductions provided for in section 486-68 of the General Code, provided that the amount so apportioned in any year shall not exceed one dollar and fifty cents per contributor, and the head of each department shall deduct such amount from the salary or compensation of each and every member, at such time as the retirement board may designate. If the amount estimated to be required to meet the expenses of the retirement board is in excess of one dollar and fifty cents per contributor for the year, the amount of such excess shall be paid from the income fund, if in the judgment of the retirement board, as evidenced by a resolution of that board recorded in its minutes, the amount in the income fund exceeds the amount necessary to cover the ordinary requirements of that

fund, and the board may transfer to the expense fund such excess amount not exceeding the entire amount to cover the expenses as estimated for the year and the retirement board may then apportion the remaining amount required for the expense fund, if any, among the contributors before mentioned."

It will be noted that in outlining the policy to be followed by the Social Security Board in granting funds in cases of the kind with which we are here concerned, the Federal board has adopted certain requirements as set forth in the paragraphs lettered (a) to (e), inclusive, of the enclosure forwarded with your letter. For convenience, these requirements will be considered in the order in which they appear in such enclosure.

(a) The first requirement is that the State law must be compulsory in its application to the employes concerned, or if the law be elective, an effective election must have been made, and the State or agency must be required by law to pay all or a part of the cost of the protection furnished to the employes.

You will observe that by the terms of Section 486-32, General Code, *supra*, the definition of a state employe includes any person "employed and/or paid in whole or in part by the state of Ohio in any capacity whatsoever," while Section 486-33c expressly provides that membership in the retirement system shall be compulsory and consist of all state employes, excepting such as avail themselves of the provisions whereby they may be exempted, and those who are exempted because of being engaged in work of a temporary, casual or exceptional nature; and even the employes in this latter group may become members upon application. It is clear from the mandatory provisions of this latter section that the act is compulsory in its application to the employes of your bureau and that the first requirement of the Federal board is clearly met.

(b) In so far as the requirement of paragraph (b) of your enclosure is concerned, the answer is contained in Section 486-51, General Code, which creates the six several funds specified in the first paragraph of such section, including the "expense fund." By the terms of this section these funds are to be used only for the purposes designated therein, that is, for the purpose of paying benefits to the employes entitled thereto under the law and the expenses of administration. It is manifest that under the existing law such funds may not be diverted to other State uses.

(c) Coming now to the requirement contained in paragraph (c), it will readily be seen that under the law including Sections 486-32, 486-33, 486-68a, 486-68d and 486-69, General Code, the rate of contribution paid by the state "is calculated on the same basis for all State agencies." Section 486-68a, *supra*, expressly provides that beginning January 1, 1939, the State "shall pay to the employer's accumulation fund a certain percentum of the compensation of each employe member," i. e., each and *every* employe of any and *all* State agencies; the section further providing that the

moneys required to be paid by the State shall be fixed on the basis of the liabilities of the retirement system and that the rates per centum of such contribution as so fixed shall be certified to the Director of Finance *and to the heads of the various departments* by the retirement board after each actuarial valuation. And by the terms of Section 486-68d the State is required to pay into the Employes Accumulation Fund "the amount certified by the retirement board which shall equal the per centum of the total compensation earnable by *all contributors* during the preceding year, which is the sum of the two rates per centum hereinbefore described and required to be computed, to wit, the sum of the normal contribution rate plus the deficiency contribution rate. From a reading of the sections under consideration, including the two sections last referred to, it is clear that the rate of contribution is calculated on the same basis for all State agencies, and it follows that our law meets the third requirement of the Federal board.

(d) That the charge for administrative costs of the retirement system is required by the State law and made against all whose employes are "covered by the law of Ohio" is manifest when the provisions of Sections 486-51 and 486-69 are considered. Section 486-51, above quoted in part, creating the six funds, makes the following provision with reference to the "income fund":

"(d) An income fund is hereby created to facilitate the crediting of regular interest on the amounts in the various other funds with the exception of the expense fund and to provide a contingent fund out of which special requirements of any of the other funds may be covered. Transfers for such special requirements shall be made only when the amount in the income fund exceeds the ordinary requirements of such fund as evidenced by a resolution of the board recorded in its minutes. The retirement board shall annually allow regular interest for the preceding year to each of said funds and the amount so allowed shall be due and payable to said funds and shall be annually credited thereto by the retirement board and paid from the income fund. All income, interest and dividends, derived from the deposits and investments authorized by this act shall be paid into the income fund.

The retirement board is hereby authorized to accept gifts and bequests. Any funds that may come into possession of the retirement system in such manner or any funds which may be transferred from the employes' savings fund by reason of lack of claimant or because of a surplus in any fund created by this act or any other monies the disposition of which is not otherwise provided for herein shall be credited to the income fund.

Should the amount in this fund in any year be insufficient

to meet the amounts payable therefrom the amount of such deficiency with regular interest added thereto shall be assessed by the retirement board in the succeeding years against the employer on the basis of the amount of the normal contributions paid by the employer, and the amounts so assessed shall be payable by such employer in the same manner and out of the same fund as the normal contributions are made and shall be credited to the income fund."

Section 486-69 provides that the retirement board shall estimate annually the administrative cost of the retirement system and shall apportion the amount so estimated in equal amounts (not to exceed \$1.50 per contributor) among the contributors; and that the "head of each department shall deduct such amount from the salary or compensation of each and every member at such time as the retirement board may designate." This section further provides that if the amount estimated to be required to meet the expenses of the retirement board is in excess of \$1.50 per contributor for the year, the amount of such excess shall be paid from the income fund, if, in the judgment of the retirement board, the amount in the income fund exceeds the amount necessary to cover the ordinary requirements of that fund.

It will be seen from the sections just quoted that the Legislature of Ohio has determined that the administrative costs shall be paid by the members of the system; the law further providing that if the amounts assessed against all contributors are insufficient, any necessary balance shall be made up by transfer from the income fund provided for in that part of Section 486-51 above quoted. It seems clear from these provisions that the General Assembly intended that the administrative costs should be paid by the members of the system, and that no charge against your Bureau is required by the State law. Thus the requirement of paragraph (d) is met.

(e) The last requirement is that the "proposed payments may lawfully be paid under State statutes from the administration fund." Under the law of Ohio not only may the proposed payments be lawfully paid from the administration fund, but in my opinion must be paid from such fund. The question here asked is similar to the one answered in Opinion No. 900 of this office rendered to you under date of July 19, 1939. In that opinion it was pointed out that it was specifically and expressly provided in Section 1345-2, *supra*, that the Unemployment Compensation Fund, designated by the Legislature as the "Unemployment Fund" is created "to be administered by the State of Ohio *without liability on the part of the State beyond the amounts paid into the fund and earned by the fund.*" It was said in the opinion referred to that this "would seem to be a plain declaration of legislative intention that there should be no payments in connection with the administration of your Bureau from any

funds appropriated by the Legislature, excepting only moneys specifically appropriated to your Bureau. I see no difference between moneys required to be paid under the Workmen's Compensation Law and moneys required to be paid under the Public Employes' Retirement Law. Both in my opinion should be paid from the Bureau's administrative fund.

Specifically answering your question, it is my opinion that, for the reasons above set forth:

Moneys required to be paid by the Bureau of Unemployment Compensation to the Public Employes' Retirement System to cover the employes of such Bureau, are required, under the law, to be paid out of the administrative fund of the Bureau created under the provisions of Section 1345-3 of the General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

977.

COUNTY HUMANE SOCIETY—WHERE DISSOLVED—DISPOSITION, ASSETS—WHERE FUNDS GIVEN BY COUNTY COMMISSIONERS—SECTIONS 5652-8, 5653, G. C.—DOG AND KENNEL FUND—COURT JURISDICTION.

SYLLABUS:

A County humane society has authority to dispose of its assets upon dissolution only in pursuance of the court's direction, when such assets consist of funds given such society by the county commissioners by virtue of Sections 5652-8 and 5653, General Code.

COLUMBUS, OHIO, August 2, 1939.

HON. RALPH FINLEY, *Prosecuting Attorney, New Philadelphia, Ohio.*

DEAR SIR: Your request for my opinion reads as follows:

"The Tuscarawas County Humane Society is planning to disband.

They have about \$3,000.00 in their treasury, nearly all of which was paid to them from the dog and kennel fund by the county commissioners of this county, under authority of law. Should the Humane Society disband without disposing of this fund, what disposition should be made thereof? Would it be lawful for the Humane Society, before disbanding, to pay this to the two general hospitals in this county for the purchase of baby incubators and other equipment used in obstetric cases?"