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RETIREMENT SYSTEM, PUBLIC EMPLOYES—MEMBER RETIRED FOR DISABILITY—MAXIMUM ALLOWANCE MEMBER WOULD BE ENTITLED TO RECEIVE HAD RETIREMENT BEEN DEFERRED TO AGE OF SIXTY YEARS—CALCULATED TO DATE WHEN SUCH MEMBER WOULD REACH AGE OF SIXTY YEARS, NOT TO END OF THEN CURRENT QUARTER—SECTION 486-63, PARAGRAPH b G. C.

SYLLABUS:

In determining the maximum retirement allowance of a member of the public employes retirement system, retired for disability under paragraph (b) of Section 486-63, General Code, the allowance to which such member would be entitled had retirement been deferred to the age of sixty years, is to be calculated only up to the date when such member would reach the age of sixty, and not to the end of the then current quarter.

Columbus, Ohio, December 12, 1947

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

Dear Sir:

Your request for my opinion reads as follows:

“A question has been raised as to the proper procedure in computing the projected retirement allowance on disability retirements as relates to sub-paragraph (b) of Section 486-63, General Code.

Will you kindly inform this office whether these calculations should merely be extended to the date upon which age sixty years is attained or whether the calculation should be projected on to the end of the quarter after age sixty years has been attained?

In approximately one-third of the disability calculations, no question would be raised, however, in some cases, there will be a question of whether there is one or two months to be considered after the member attains age sixty, or until the end of the quarter after the member has attained that age.”

Section 486-63, General Code, in so far as pertinent reads as follows:

“Upon disability retirement, a member shall receive a retirement allowance which shall consist of:

(a) An annuity having a reserve equal to the amount of the member's accumulated contributions at that time.

(b) A pension which, together with his annuity, shall provide an allowance of one and six-tenths per centum of his final average salary during the last ten years or fraction thereof immediately preceding retirement, multiplied by the number of his years of total-service, but not less than thirty per centum of said average salary, with the exception that in no case shall the retirement allowance exceed nine-tenths of *the allowance to which he would have been entitled had retirement been deferred to the age of sixty* and had contributions at the rate existing during the last year of active service *been continued to the age of sixty years exclusive of the basic annual pension.*" (Emphasis added.)

We are concerned only with the determination of the maximum which a disability applicant may receive by way of retirement allowance; that maximum is to be determined by making a computation based on the hypothesis above stated, to wit, that the member in question, instead of now retiring on disability should have continued in service and retired at the age of sixty.

In order to make such computation, we must turn to the law to determine just what the member in question would be entitled to if he continues his service to the age of sixty and then exercises his right to retire. Section 486-59, General Code, provides in part, as follows:

"On and after January 1, 1939, any member, except a new member with less than five years of service, who has attained sixty years of age, may retire by filing with the retirement board an application for retirement. The filing of such application shall retire such member *as of the end of the quarter* of the calendar year then current." (Emphasis added.)

Here, it will be noted that the member upon attaining the age of sixty years "may retire by filing with the retirement board an application for retirement." However, the filing of such application does not immediately result in the payment of his retirement allowance, for it is provided that "The filing of such application shall retire such member *as of the end of the quarter of the calendar year then current.*" The quarters of any calendar year end on the last days of March, June, September and December.

If, then, the member attains the age of sixty on the first day of January and files his application on or about that day, manifestly he will

be retired as of the close of the 31st day of March. There is nothing in the law that would require him to continue in active service until the end of the current quarter after he has reached sixty, and filed his application for retirement. On the contrary, there is no reason why he should not so continue if he desires to do so. In either event, his contributions would continue *only* while he remains on the payroll, and his annuity would be computed only on the basis of his actual contributions. If the member quits his service and his contributions cease on the day he files his application, it would be absurd to hold that his annuity and retirement allowance should be figured on the basis of contributions to the end of the quarter.

Applying this rule of measurement to the hypothetical case which the law introduces for the purpose of determining the maximum disability allowance, what justification can be found for the assumption that in such case the member continues in service and continues his contributions until the end of the quarter? That assumption is not warranted by the language of Section 486-63 *supra*. On the contrary, the law in my opinion confines the calculation of this mythical allowance to the contributions up to sixty. The language used is: "had contributions at the rate existing during the last year of active service been continued *to the age of sixty years*." The statute does not say, "to the age of sixty and thereafter until the end of the current quarter." Furthermore, there is no basis stated or suggested on which the *rate* of contributions thereafter could be determined for the purpose of the computation.

In my opinion, there is no sound reason to be found in the law as it stands, for carrying this hypothesis any further than its terms clearly indicate, and you would be without authority to project your calculations on to the end of the quarter in which the age of sixty has been attained.

Respectfully,

HUGH S. JENKINS,
Attorney General.