

OPINION NO. 70-080**Syllabus:**

The phrase "date of disability pension approval" as used in Opinion No. 69-057, Opinions of the Attorney General for 1969, is the date established by the employer and employee for termination of employment and entering upon disability pension status.

To: James O. Brennan, Executive Director, School Employees Retirement System, Columbus, Ohio

By: Paul W. Brown, Attorney General, July 14, 1970

Your request for my opinion concerns itself with the term "date of disability pension approval" which was used in one of my previous opinions and its applicability to facts which have not been presented to either me or any of my predecessors. The opinion to which you have referred is Opinion No. 69-057, Opinions of the Attorney General for 1969, wherein the syllabus reads:

"A school bus driver under contract with a board of education is qualified to receive sick leave benefits which he has accumulated under Section 143.29, Revised Code, from the time he fails to pass the required physical examination for bus driver to the date of disability pension approval."

You remark that:

"In this regard, several facts could be considered:

"1. The 'date of disability pension approval and the effective date of the disability pension are never the same date.

"2. The effective date of the disability pension is always several months or more before the date the disability pension is approved.

"3. Approximately 10% of school bus drivers applicants for disability pensions are disapproved."

As a result of a conversation between one of my assistants and the Assistant Director, Retirement Services, of your staff, I have a letter from him which recites:

"We discussed the 'see saw' aspects of fixing the legal effective beginning date of a disability pension, when the application for disability retirement is filed prior to termination of the employees contributing membership. In this event, the last day of employment for which compensation was paid shall determine the effective date of the pension.

"You asked if we would send you a letter outlining the steps involved in the application and process of disability claims. The following are the major steps:

"1. The employee secures an application from School Employees Retirement System or the employer will request one in his behalf.

"2. The application may be submitted by the employee, his employer, or a person acting in his behalf, ie: a spouse or legal guardian.

"3. When the application is received at School Employees Retirement System, it is received and a medical examination is arranged. Note: From the date an application is received to the date a medical recommendation is submitted to the Retirement Board, a period of two or three months could elapse.

"4. Following action by the Retirement Board on the medical recommendation, the employee and employer are immediately informed of what action was taken, ie: approval or disapproval of the medical recommendation.

"5. If the action by the Retirement Board was for approval of the medical recommendation, the employer and the employee could then establish a termination date. When School Employees Retirement System is advised by the employer of the last day for which the employee will be compensated, the legal effective beginning date of the disability pension is established as provided in paragraph two of the

enclosed Retirement Board resolution. This resolution is based on Section 3309.34 and 3309.39 R.C.

"6. Once the effective date is established, the calculation of the amount of the benefit can be made, the benefit paid to the employee and formal Retirement Board action or the entire transaction obtained."

The resolution above referred to, after approval by the School Employees Retirement Board on December 26, 1963, was filed in the Office of the Secretary of State on March 11, 1964 and provides:

"If otherwise eligible, Sections 3309.34 and 3309.39 Revised Code provide that the allowance shall be effective on the '***First day of the month next following the date the application is filed, or on the first day of the month next following the last day of employment for which compensation was paid, whichever is the later date***'

"1. Where contributions have terminated prior to receipt of the member's application, the filing of the application shall determine the effective date of allowance.

"2. Where the application is filed prior to termination of contributions, the last day of employment for which compensation was paid shall determine the effective date of allowance.

"3. The last day of employment for which compensation was paid shall be extended only to include the last day for which an employee is compensated by an employer to complete earned vacation, sick or terminal leave pay, although no services have been performed.

"4. Full service credit shall be granted for each month contributions were reported on earned compensation for an employee prior to the effective date of retirement except as otherwise provided in Chapter 3309. Revised Code."

In light of the above it appears to be unfortunate that the request for Opinion No. 69-057, supra, was phrased:

"Can a board of education pay sick leave provision to a bus driver from the date he was denied a license renewal due to a physical disability and prior to the date of disability pension approval?"

Cutting through the surplusage which seems to have built up in this area, it would appear that pure logic dictates that an individual is entitled to receive sick leave benefits which he has accumulated up until the effective date of his retirement and not beyond that date. To suggest otherwise would result in his drawing dual compensation in the form of both sick leave benefits and disability pension retirement.

It is therefore my opinion and you are hereby advised that the phrase "date of disability pension approval" as used in

Opinion No. 69-057, Opinions of the Attorney General for 1969, is the date established by the employer and employee for termination of employment and entering upon disability pension status.