

1537.

STATE TEACHERS' RETIREMENT SYSTEM—REQUEST FOR EXEMPTION FROM MEMBERSHIP—LIMITED TO TEACHERS IN SERVICE ON FIRST DAY OF SEPTEMBER, 1920—NO TEACHER UPON RE-ELECTION OR RE-APPOINTMENT AFTER SEPTEMBER 1, 1920 CAN AGAIN ASK FOR EXEMPTION—WHEN TEACHER RELINQUISHES HIS STATUS AS PRESENT TEACHER, UNDER RETIREMENT SYSTEM—HOW TEACHER CAN RECEIVE CREDIT FOR PRIOR SERVICE.

1. *Where a teacher requests exemption from membership in the state teachers' retirement system, under section 7896-22 G. C., the privilege of filing a request for exemption from membership in the state teachers' retirement system is limited to those teachers in service on the first day of September, 1920, and no teacher upon his re-election or re-appointment, after September 1, 1920, can again ask for exemption from membership in the state teachers' retirement system, because of the provisions of section 7896-49 G. C.*

2. *Where a teacher under the provisions of paragraph (a) of section 7896-22 G. C. has filed with his employer, prior to the first day of September, 1920, a statement in writing requesting exemption from membership in the state teachers' retirement system, such teacher relinquishes thereby his status as a present teacher, as defined in section 7896-1 G. C., unless he becomes a member of the state retirement system on the date of his first service as a teacher after the first day of September, 1920, and within one year after his last day of service previous to said first day of September, 1920, and credit for prior service is therefore lost by the teacher for the reason that prior service certificates can be issued only to those teachers who have the status of a present teacher as defined in section 7896-1 G. C.*

COLUMBUS, OHIO, August 30, 1920.

HON. ROBERT E. MARSHALL, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter in which you desire the opinion of this department upon the following question:

“Under section 7896-22 of the teachers retirement system where a teacher requests exemption from membership in the retirement system, and whose contract of employment has expired, upon his reelection may he again ask for exemption?”

Section 7896-22 G. C. reads in part as follows:

“The membership of the retirement system shall consist of the following:

(a) All teachers in service on the first day of September, nineteen hundred and twenty, except teachers who have filed with their employer a statement in writing requesting exemption from membership or teachers who are excluded by the provisions of this act.

(b) All teachers who became teachers or who were reappointed as teachers after the first day of September, nineteen hundred and twenty, except teachers who are excluded by the provisions of this act.”

It would appear that your question upon section 7896-22 is really whether a teacher who requests exemption under the provisions of paragraph (a), as above

quoted, could then later, upon re-election, re-employment or re-appointment, again ask for exemption and thus continue such requests indefinitely.

A careful examination of the language above quoted from section 7896-22 G. C. shows that the exemption provision occurs only in paragraph (a), that is, the grant is made to all teachers in service on the first day of September, 1920, and there is no provision for requesting exemption from membership appearing in paragraph (b), that is, those teachers who were "re-appointed as teachers after the first day of September, 1920."

The meaning of the section is that the exemption can be requested during the current year (1920), but the request for exemption must have been filed with the employer prior to September 1, 1920. It is noted that the paragraph speaks of "their employer" in the singular number and clearly means the employer who is their employer on the first day of September, 1920, for that period of time which comes after September 1, 1920, paragraph (b) governs, and there is no provision in such paragraph for any request for exemption for membership in the state teachers' retirement system. The teachers excluded by the provisions of the state teachers' retirement system act are the members of the local district pension system heretofore established, and those teachers who are excluded by the retirement board itself in accordance with the provisions of section 7896-24.

As to the possible intentment of the general assembly in passing the teachers retirement law, attention is invited to section 7896-49, which reads as follows:

"Each employer, before employing any teacher to whom this act may apply, shall notify such person of his duties and obligations under this act as a condition of his employment.

Any such appointment or re-appointment of any teacher in the public day schools of the state on or after the first day of September, nineteen hundred and twenty—or service upon indefinite tenure after that date shall be conditioned upon the teacher's acceptance of the provisions of this act, as a part of the contract."

This section makes all appointments and re-appointments after September 1, 1920, conditioned upon the teachers' acceptance of the provisions of the state retirement law, as a part of the contract. The only exemption allowed is to teachers in service on the first day of September, 1920, and that service is terminated by the expiration of the teacher's contract in force on that date. It is noted that when the present local district pension systems were provided for by sections 7875 to 7896 G. C., inclusive, it was provided in section 7877 G. C. that teachers employed at that time could have the privilege of consenting or declining to accept the provisions of the local district pension system act. This same principle or provision seems to have been carried into the new law establishing the state teachers' retirement system, that is, that teachers in service on a certain day could ask exemption from the act, and those contracts in existence at that time might not be affected, but the state teachers' retirement act further provided that where a teacher was re-employed or re-appointed after September 1, 1920, the teacher's acceptance of the provisions of the state teachers' retirement law becomes a part of the contract, as provided in section 7896-49, *supra*.

It would appear that the possible intent of the general assembly in its broader sense was that every teacher in Ohio should belong to a retirement system of some kind, that is, either the state retirement system for teachers or a local district pension system. The act itself has provided specifically for those who are excluded from membership and its language indicates that after the exemption provided for in paragraph (a) of section 7896-22 is exhausted, every teacher in the public schools in the state must be either a member of the state retirement system

or a local district pension system which has not merged with the state system. If teachers were allowed to request exemption, year after year, and the act itself does not provide that they can, it is entirely possible that boards of education not desiring to contribute to the retirement fund might simply require teachers to request exemption as a condition of their being employed in that particular district and thus defeat the entire purpose of the law.

An examination of further sections of the state teachers' retirement act indicates that it is the intent of the law that the state retirement board shall at all times have before it the personal status of all the teachers in the public schools of the state. This is evidenced by the following sections which are pertinent:

Section 7896-50. "During September of each year, or at such other time as the retirement board shall approve, each employer shall certify to the retirement board the names of all teachers to whom this act applies."

Section 7896-51. "Each employer shall on the first day of each calendar month, or at such less frequent intervals as the retirement board may approve, notify the retirement board of the employment of new teachers, removals, withdrawals and changes in salary of teachers that shall have occurred during the month preceding or the period since the period covered by the last notification."

Thus it says that the retirement board shall be notified by the board of education on the first day of each calendar month, or even at lesser periods, of facts relative to the employment of any new teachers and it would thus appear that the new teachers mentioned in section 7896-51 would be those who would fall within paragraph (b) of section 7896-22 and section 7896-49 G. C., supra.

Section 7896-54 G. C. also provides:

"Each employer shall keep such records and shall furnish such information and assistance to the retirement board as it may require in the discharge of its duties."

In passing it might be well to note that where a teacher requests exemption from membership in the state teachers retirement system, under the provisions of paragraph (a) of section 7896-22 G. C., such teacher thereby relinquishes in a very large degree the right to a prior service certificate, which is all important in the administration of this act, for "prior service" is defined in section 7896-1 to be "all service as a teacher" rendered before the first day of September, 1920, *by a present teacher*, and a "present teacher" is defined in the same section to be one

"who became a member on said date (September 1, 1920) or on the date of his first service as a teacher after said date and within one year after his last day of service previous to said first day of September, nineteen hundred and twenty."

The same section also provides that unless a teacher has a status of a present teacher, he shall be known as a "new-entrant" and thus the teacher who secured the exemption provided for in section 7896-22 might have to enter the state retirement system at a later time, as herein described, as a "new-entrant", and thus have only those rights under the act in question to which new entrants are entitled.

Speaking further as to the possible intentment of the general assembly in enacting this law for the benefit of those engaged in the teaching profession, attention is also invited to the provisions appearing in section 7896-5 G. C., which reads in part as follows:

"The first election of teacher members of the retirement board shall be conducted by and under the supervision of the superintendent of public instruction within sixty days after the first day of September next succeeding the passage of this act. At the first election *each teacher shall be deemed to be a member of the retirement system and shall have the right to vote for two candidates for membership in the retirement board * *.*"

The section then further provides that any teacher in a local district pension system who exercises such right to vote, shall be deemed to have petitioned for a merger with the state teachers' retirement system, and his name shall be deemed to have been duly signed to any such petition later circulated in such local district pension system for the purpose of bringing about such proposed merger.

The language quoted from section 7896-5 says "each teacher shall be deemed to be a member of the retirement system and shall have the right to vote." Nowhere in such section of the retirement act does there appear any language that it was the intent of the general assembly that a portion of the teachers of the state should be exempt permanently from the provisions of the teachers' retirement act. It must mean all teachers in service at the time of the first election, that is, September 1, 1919. This clearly carries the idea in one of the early sections of the law that it was the contemplation of the general assembly that each teacher, that is, all teachers, were contemplated as coming within the provisions, sooner or later, of the teachers retirement system. Following this section, then, comes the language of section 7896-22 G. C., which has heretofore been discussed, providing that all teachers in service on the first day of September, 1920, except those teachers who have filed with their employer a statement in writing requesting exemption from membership, shall be considered as being members of the retirement system. If it was the intent of the general assembly that only a limited number of teachers in the state should constitute the membership of the retirement system, then it may be pertinently asked as to why in the first election of teacher members of the retirement board, presumed to represent the teaching personnel of the state on such retirement board, it is provided that:

"Each teacher shall be deemed to be a member of the retirement system and shall have the right to vote for two candidates for membership in the retirement board?"

It would appear that it was the intention of those who are responsible for this new legislation in this state that all teachers in the state should sooner or later be considered members of the state teachers retirement system, but as there were existing a number of contracts held by teachers, running for two, three or four years, it was necessary to provide that teachers in service on September 1, 1920, could "file with their employer" (note the singular) a request to be exempt and thus save the act from any question as to the impairment of the obligation of contracts then existing. Contracts running beyond September 1, 1920, had in many cases been made prior to that date and without knowledge of any law of this kind, which was later passed; and thus the law, to fall within the constitution, could not affect contracts then in existence because the contracting parties had no knowledge of the provisions now appearing in the teachers' retirement act. But on the other hand, as provided in section 7896-22, in paragraph b, "all teachers who became teachers or *who were reappointed as teachers* after the first day of September, 1920" would have knowledge of the existence of this law and the question of the impairment of the contract would not enter, and it is also provided in section 49 that each employer before employing any teacher to whom this act may apply, shall notify such person of his duties and obligation under this act *as a condition of his employment*. This same section further provides that after September 1, 1920, any appointment or reappoint-

ment in the public day school "shall be conditioned upon the teacher's acceptance of the provisions of this act *as a part of the contract*.

It would therefore appear from the sections of the law herein quoted and the opinion of this department is, that:

1. Where a teacher requests exemption from membership in the state teachers' retirement system, under section 7896-22 G. C., the privilege of filing a request for exemption from membership in the state teachers' retirement system is limited to those teachers in service on the first day of September, 1920, and no teacher upon his re-election or re-appointment, after September 1, 1920, can again ask for exemption from membership in the state teachers' retirement system, because of the provisions of section 7896-49 G. C.

2. Where a teacher under the provisions of paragraph (a) of section 7896-22 G. C. has filed with his employer, prior to the first day of September, 1920, a statement in writing requesting exemption from membership in the state teachers' retirement system, such teacher relinquishes thereby his status as a present teacher, as defined in section 7896-1 G. C., unless he becomes a member of the state retirement system on the date of his first service as a teacher after the first day of September, 1920, and within one year after his last day of service previous to said first day of September, 1920, and credit for prior service is therefore lost by the teacher for the reason that prior service certificates can be issued only to those teachers who have the status of a present teacher as defined in section 7896-1 G. C.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1538.

APPROVAL, BONDS OF WYANDOT COUNTY, OHIO, IN AMOUNT OF \$114,000 FOR ROAD IMPROVEMENTS.

Industrial Commission of Ohio, Columbus, Ohio.

COLUMBUS, OHIO, August 30, 1920.

1539.

APPROVAL, BONDS OF CAREY VILLAGE SCHOOL DISTRICT IN AMOUNT OF \$155,000.

Industrial Commission of Ohio, Columbus, Ohio.

COLUMBUS, OHIO, August 30, 1920.