

## OPINION NO. 72-036

**Syllabus:**

An elected official who was eligible during a certain period of time to join both the Public Employees' Retirement System and the State Teachers' Retirement System, but whose contributions to the former cover only a brief portion of that period, is eligible under Section 145.201, Revised Code, to purchase additional service credit only for 30 per cent of the service credit actually earned as an elected official.

To: J. Douglass Peters, Acting Exec. Director, Public Employees Retirement System, Columbus, Ohio  
By: William J. Brown, Attorney General, May 5, 1972

I have before me your predecessor's request for my opinion, which reads as follows:

"Does a member of this retirement system, who is also a member of the State Teachers Retirement System and who plans to retire shortly on a joint retirement basis (as provided in Section 145.37 (B) and Section 3307.41 (3) of the Revised Code), have the right to purchase up to 30% additional service credit (as provided by Section 145.201 of the Revised Code) for elected service rendered on which the regular retirement contributions, provided for in Section 145.47 of the Revised Code, have not been made to this System?

"By way of background this member became employed in September 1947 in a capacity covered by the State Teachers Retirement System and contributed to that retirement system until the school year 1963-64 (S.T.R.S. has certified to P.E.R.S. that the member has 14.15 years of credit in that System). During the time the member was contributing to S.T.R.S. he did not contribute to P.E.P.S., however, from January 1, 1949 to December 31, 1951 and from January 1, 1953 to January 1969, he served in an elected capacity covered by P.E.R.S. He did make the regular contributions to P.E.P.S. from January 1, 1963 to January 1969 and he also made a payment covering the period from December 18, 1950 to December 31, 1951 for service rendered as an elected official. He has made no purchase, to date, covered by Section 145.201 of the Revised Code."

I understand from your question that the member was eligible to contribute to both P.E.R.S. and S.T.P.S. for a period of time prior to 1963, because of his dual capacities in the public school system and in an elective office. However, he contributed only to S.T.R.S. prior to 1963. He contributed only to P.E.P.S. from 1963 to 1969, and during that time he did make a payment to P.E.R.S. covering his service as an elective officer during the period from December 18, 1950 to December 31, 1951.

Section 145.37, Revised Code, allows a person who has contributed to different retirement systems to combine his service credit for purposes of computing retirement eligibility and benefits. That Section reads, in pertinent part, as follows:

"For the purpose of further co-ordinating and integrating membership in the public school employees retirement system and the state teachers retirement system with membership in the public employees retirement system for the purposes of retirement, the following provisions apply:

"(A) State retirement systems are the public employees retirement system, the state

teachers retirement system, and the school employees retirement system.

"(B) At the option of a member, total contributions and service credit in all state retirement systems shall be used in determining the eligibility and total retirement allowance payable. When total contributions and service credit are so combined, the following provisions apply:

\* \* \* \* \*

"(2) 'Total service credit' includes the total credit in all state retirement systems except that such credit shall not exceed one year for any period of twelve months.

\* \* \* \* \*

(Section 3307.41, Revised Code, is virtually identical.) The limitation on total service credit contained in Section 145.37 (B) (2), *supra*, is apparently the reason why this member contributed only to S.T.R.S. until 1963, even though he had been eligible for membership in P.E.P.S. for several years. Under the plain language of Subsection (B) (2), *supra*, contributions to both systems in the same year would not result in double credit, because the combined credit for a twelve-month period cannot exceed one year. Apparently for the same reason, the member has made no effort, under Section 145.20, Revised Code, to purchase P.E.P.S. service credit retroactively for the period of elective service during which he did not contribute to P.E.P.S., with the exception of the period from December 18, 1950 to December 31, 1951.

Section 145.201, *supra*, reads, in pertinent part, as follows:

"Any member of the public employees retirement system who is or has been an elected official of the state or any political subdivision thereof may at any time prior to retirement purchase additional service credit in an amount not to exceed thirty per cent of the service credit, other than military service and part-time service, allowed him for the period of service as an elected official subsequent to January 1, 1935. \* \* \*"

(Emphasis added.)

By its terms, this Section authorizes only the purchase of 30 per cent of the service credit "allowed him for the period of service as an elected official." The member does not have P.E.P.S. service credit as an elected official for the time in question, except for the period between December 18, 1950 to December 31, 1951. Therefore, he can qualify under Section 145.201, *supra*, only for that period of time, unless some other provision authorizes the transfer of service credit from S.T.R.S. to P.E.P.S. for purposes of this Section.

The statute which provides for combining service credit in different retirement systems is Section 145.37, *supra*. None of its provisions authorizes the transfer in question. Subsection (B), *supra*, authorizes the combination of service credit in all

systems "in determining the eligibility and total retirement allowance payable." This language, on its face, authorizes the combining of service credit for purposes of computing eligibility to retire and retirement benefits. Section 145.201, supra, concerns a different subject: eligibility to purchase additional service credit prior to retirement. Furthermore, the amount of additional service credit which may be purchased is limited to 30 per cent of the service credit earned as an elected official. Hence, Section 145.37 (B), supra, does not authorize the combining of service credit for purposes of Section 145.201, supra.

Section 145.37 (E), supra, contains several detailed provisions regulating the transfer and combining of service credit. None mentions Section 145.201, supra, or its subject matter. Section 145.37 (B) (7), supra, reads as follows:

"(7) Any member who was an elective official of this state, or of any political subdivision thereof, shall be entitled to have his retirement allowance computed as provided in division (E) of sections 145.33, 145.34, 3309.36, 3309.38, and division (A) of section 3307.38 of the Revised Code, notwithstanding the provision requiring three or more years of total service credit within the ten years immediately prior to retirement."

The statutes mentioned in this Subsection refer to allowance upon superannuation retirement, and service retirement.

Section 145.37 (B) (6) (b), supra, reads as follows:

"(6) The state retirement system determining and paying the retirement allowance shall receive from the other system or systems the present value as determined by the transferring system of the proportionate share of the total reserve required to fund the total liability.

\* \* \* \* \*

(b) Deposits made for the purpose of an additional annuity, and including guaranteed interest, upon the request of the member, shall be transferred to the state retirement system paying the retirement allowance. The return upon such deposits shall be that offered by the state retirement system making the calculation and paying the retirement allowance."

The benefits provided by Section 145.201, supra, are not an annuity, and therefore are not covered by this Subsection. Section 145.01 (L), Revised Code, defines "annuity" as follows:

"(L) 'Annuity' means payments for life derived from contributions made by a contributor and paid from the annuity and pension reserve fund as provided in Chapter 145. of the Revised Code. All annuities shall be paid in twelve equal monthly installments."

The annuity and pension reserve fund is established by Section 145.23 (C), Revised Code. Section 145.201, supra, provides that its benefits are funded by contributions to the employees' savings

fund, established by Section 145.23 (A), supra.

Since the legislature has chosen to regulate, in detail, the subject of transfer of service credit between retirement systems, and has not provided for a transfer of credit for purposes of Section 145.201, supra, I conclude that such a transfer is not authorized. Hence, the member's service credit for purposes of Section 145.201, supra, is only that earned from December 18, 1950 to December 31, 1951, for which he actually contributed to P.E.R.S.

In specific answer to your question it is my opinion, and you are so advised, that an elected official who was eligible during a certain period of time to join both the Public Employees' Retirement System and the State Teachers' Retirement System, but whose contributions to the former cover only a brief portion of that period, is eligible under Section 145.201, Revised Code, to purchase additional service credit only for 30 per cent of the service credit actually earned as an elected official.