

OPINION NO. 90-047**Syllabus:**

1. Interrupted military service credit purchased by a member of the Highway Patrol Retirement System pursuant to R.C. 5505.16(D) may be used in calculating the member's twenty-five years of service under R.C. 5505.16(A) or the member's twenty years of service under R.C. 5505.16(B) for purposes of determining such member's eligibility to apply for and receive a pension.
2. Military service credit purchased by a member of the Highway Patrol Retirement System pursuant to R.C. 5505.25(A) may not be used in satisfaction of any of the minimum service requirements set forth in R.C. 5505.16 for purposes of determining such member's eligibility to apply for and receive a pension.

**To: R. D. Huffman, Executive Director, Highway Patrol Retirement System,
Columbus, Ohio**

By: Anthony J. Celebrezze, Jr., Attorney General, July 13, 1990

You have requested my opinion regarding the purchase of interrupted military service credit and prior military service credit by a member of the Highway Patrol Retirement System (HPRS) under R.C. 5505.16 and R.C. 5505.25 respectively. Your specific questions are as follows:

1. Can a member purchase interrupted military service credit under R.C. 5505.16(D) to be credited toward either the 25 year minimum requirement of R.C. 5505.16(A) or the 20 year minimum requirement of R.C. 5505.16(B)?
2. Can a member purchase prior military service credit under R.C. 5505.25(A) to be credited toward the 25 year minimum requirement of R.C. 5505.16(A)?

R.C. 5505.16, to which your first question is addressed, sets forth the age and service requirements that, when satisfied, make a member of HPRS eligible to file with the State Highway Patrol Retirement Board an application for retirement and the receipt of a pension. R.C. 5505.16(A) provides that a member of HPRS

who has been in the service of the state highway patrol for a period of twenty-five years as an employee according to the rules adopted by the state highway patrol retirement board may make application for a pension which, if he is under age forty-eight, shall be deferred until he attains age forty-eight.

R.C. 5505.16(B) similarly provides that a member of HPRS "who has been in the service of the highway patrol for a period of twenty years as an employee according to the rules adopted by the retirement board, may make application for a pension which, if he is under age fifty-two, shall be deferred until he attains age fifty-two." Moreover, any such member of HPRS "who has attained twenty years of service may, on or after the date he attains age forty-eight but before the date he attains age fifty-two, elect to receive a reduced pension" in accordance with the schedule hereinafter provided. *Id.* See also R.C. 5505.16(C) (mandatory retirement for any member of HPRS who attains the age of fifty-five years and has been in the service of the State Highway Patrol for a period of twenty years as a uniformed patrol officer). R.C. 5505.16(D) permits a member of HPRS to receive service credit, upon the conditions therein specified, for periods of time during which his employment with the State Highway Patrol is or was interrupted by certain types of military service performed by the member in the United States Armed Forces. R.C. 5505.16(D) reads, in pertinent part, as follows:

A member's total service credit may include periods not to exceed a total of seven years, while his employment with the state highway patrol is or was interrupted due to service rendered by him in the armed forces of the United States except such members who enlist, volunteer, or seek active military status during peacetime periods; however, no member shall lose any military service credit by virtue of his having enlisted to satisfy his military service obligation under the "Selective Service Act." Such military service shall be credited to him towards total service as provided by this chapter and to the extent approved by the board, provided that:

- (1) He is or was honorably discharged from such armed forces;
- (2) He is or was reemployed by the state highway patrol within ninety days immediately following termination of such armed service;
- (3) He pays into the retirement system to his credit in the employees' savings fund an amount equal to the total contributions he would have paid had his state highway patrol employment not been so interrupted. Such repayment shall begin within ninety days after his return to duty with the state highway patrol and must be completed within a period of time equal to that of the inclusive dates of his military service.

R.C. 5505.16(D) also prohibits a member of HPRS from purchasing service credit under R.C. 5505.16 "for any year of military service used in the calculation of any retirement benefit currently being paid or payable in the future under any other retirement program except social security."

R.C. 5505.25, which is the focus of your second question, permits a member of HPRS to receive service credit for each year of service incurred by the member on active duty as a member of the United States Armed Forces, R.C. 5505.25(A), and for each year of service such member was a prisoner of war, R.C. 5505.25(B). As pertains herein, R.C. 5505.25(A) states the following:

A member of the state highway patrol retirement system who is not receiving a disability benefit or pension from the system may purchase service credit for each year of service incurred by reason of having been on active duty as a member of the armed forces of the United States if he is honorably discharged. *Credit purchased under this section shall be used in computing the member's years of service for purposes other than meeting the minimum number of years of service necessary in order to qualify under section 5505.16 of the Revised Code to receive a pension under this chapter.* Credits which are not authorized under division (D) of section 5505.16 of the Revised Code may be purchased at any time. The number of years purchased under this division shall not exceed five. (Emphasis added.)

In accordance with the emphasized portion of R.C. 5505.25(A) quoted above, military service credit purchased thereunder is to be used in computing a member's years of service for purposes "other than meeting the minimum number of years of service necessary in order to qualify under [R.C. 5505.16] to receive a pension under [R.C. Chapter 5505]." R.C. 5505.25(C) also provides that the total number of years purchased under R.C. 5505.25 shall not exceed the member's total accumulated number of years of Ohio service, and R.C. 5505.25(D) describes, *inter alia*, the procedure by which a member of HPRS shall pay for military service credit purchased under R.C. 5505.25(A) or R.C. 5505.25(B). R.C. 5505.25(D) also prohibits a member of HPRS from purchasing service credit under R.C. 5505.25 for any year of military service used in the calculation of any retirement benefit currently being paid to the member or payable in the future under any other retirement program except for retired pay for nonregular service under chapter 67 of Title 10 of the United States Code, 10 U.S.C. §§1331-1338, or Social Security.

In your first question you ask whether interrupted military service credit that is purchased by a member of HPRS pursuant to the terms of R.C. 5505.16(D) may be used in calculating the aggregate number of years of service to be credited to the member under R.C. 5505.16(A) or R.C. 5505.16(B). Your question is prompted by the fact that R.C. 5505.16(D) does not specifically state that interrupted military service credit purchased thereunder may be used in satisfaction of the twenty-five years of service requirement of R.C. 5505.16(A) or the twenty years of service requirement of R.C. 5505.16(B). Rather, R.C. 5505.16(D) provides, in pertinent part, that, "[a] member's *total service credit* may include periods not to exceed a total of seven years, while his employment with the state highway patrol is or was interrupted due to service rendered by him in the armed forces of the United States," and that "[s]uch military service shall be *credited* to him towards *total service* as provided by [R.C. Chapter 5505] and to the extent approved by the board." (Emphasis added.) R.C. 5505.16(A), on the other hand, authorizes the filing of an application for a pension by any member of HPRS "who has been *in the service* of the state highway patrol for a period of twenty-five years as an *employee* according to the rules adopted by the state highway patrol retirement board," which is payable upon the member's attaining age forty-eight; R.C. 5505.16(B) similarly authorizes the filing of an application for a pension by any member of HPRS "who has been *in the service* of the highway patrol for a period of twenty years as an *employee* according to the rules adopted by the retirement board," which is payable, in full, upon the member's attaining age fifty-two. (Emphasis added.)

The question, therefore, is whether interrupted military service credit purchased under R.C. 5505.16(D) may be used in calculating a member's twenty-five years of service under R.C. 5505.16(A), or his twenty years of service under R.C. 5505.16(B) insofar as both R.C. 5505.16(A) and R.C. 5505.16(B) are phrased in terms of service rendered as an employee of the State Highway Patrol, whereas the interrupted military service credit authorized by R.C. 5505.16(D) is, by the express language thereof, attributed to periods of time during which a member of HPRS is or was rendering service in the United States Armed Forces, and not rendering service as an employee of the State Highway Patrol.

Notwithstanding the certain lack of precision thus reflected by the language of these statutory enactments, it is my opinion that interrupted military service credit purchased by a member of HPRS pursuant to R.C. 5505.16(D) may be used in calculating a member's twenty-five years of service under R.C. 5505.16(A), or such member's twenty years of service under R.C. 5505.16(B). I find support for this conclusion, in large part, in the definition of "[t]otal service" that appears in R.C. 5505.01(C). As noted previously, R.C. 5505.16(D) provides that military service rendered by a member of HPRS in the United States Armed Forces that interrupts his employment with the State Highway Patrol shall, in accordance with the conditions and purchase procedures therein stated, *see* R.C. 5505.16(D)(1)-(3), "be credited to him towards total service as provided by [R.C. Chapter 5505] and to the extent approved by the board." "Total service," as used in R.C. Chapter 5505, is defined in R.C. 5505.01(C) as "all service rendered by an employee to the extent credited by the board." *See* R.C. 5505.01(A) (as used in R.C. Chapter 5505, "[e]mployee" means, *inter alia*, "any qualified employee in the uniform division of the state highway patrol"). R.C. 5505.01(C) further enumerates, however, specific

categories of service and service credit that are to be included as part of "[t]otal service":

Total service includes all of the following:

- (1) Contributing service rendered by the employee since last becoming a member of the state highway patrol retirement system;
- (2) All prior service credit;
- (3) Restored service credit as provided in this chapter;
- (4) *Military service credit purchased under division (D) of section 5505.16 or section 5505.25 of the Revised Code;*
- (5) Credit granted under division (C) of section 5505.17 or section 5505.201 or 5505.202 of the Revised Code;
- (6) Credit for any period, not to exceed three years, during which the member was out of service and receiving benefits under Chapters 4121. and 4123. of the Revised Code. (Emphasis added.)

I read the language of R.C. 5505.01(C)(4) set forth above to mean that interrupted military service credit purchased by a member of HPRS under R.C. 5505.16(D) is the equivalent of "service rendered by an employee" of the State Highway Patrol. I am also of the opinion that "service rendered by an employee" of the State Highway Patrol, R.C. 5505.01(C), is the same as being "in the service of" the State Highway Patrol "as an employee," R.C. 5505.16(A), (B). It follows, therefore, that interrupted military service credit that is purchased by a member of HPRS under R.C. 5505.16(D) and credited to him towards "[t]otal service," as defined in R.C. 5505.01(C), may be used in calculating the member's twenty-five years of service under R.C. 5505.16(A), or the member's twenty years of service under R.C. 5505.16(B).

This conclusion also draws support from the specific context of R.C. 5505.16 itself, as well as several other provisions in R.C. Chapter 5505 that address the purpose for which other types of purchased service credit may be used. By their express terms, R.C. 5505.16(A), R.C. 5505.16(B), and R.C. 5505.16(C)¹ address the use of the service requirements therein stated for determining the initial eligibility of a member of HPRS to apply for and receive a pension from HPRS. A member's years of service, as well as any service credit he may have purchased, are also used to calculate the amount of pension to be received by the member. See R.C. 5505.17 (pensions and benefits; service credit during leave of absence); R.C. 5505.18 (pension upon disability).² The interrupted military service credit provision at

¹ R.C. 5505.16(C) reads as follows:

Any member who attains the age of fifty-five years and has been in the service of the patrol for a period of twenty years as a uniformed patrol officer according to the rules adopted by the board, shall file application for retirement with the board, and if he refuses or neglects to do so, the board may deem his application to have been filed on his fifty-fifth birthday. The member may, upon written application approved by the superintendent of the state highway patrol, be continued in service after attaining the age of fifty-five years, but only until the member has accumulated twenty years of service.

² R.C. 5505.17(A)(1), for example, states the following:

Upon his retirement as provided in section 5505.16 of the Revised Code, a member of the state highway patrol retirement system shall receive a life pension, without guaranty or refund, equal to the sum of two and one-half per cent of his final average salary multiplied by the first twenty years of his total service credit, plus two per cent of his final average salary for each of the twenty-first to twenty-fifth years, plus one and one-half per cent of his final average salary multiplied by the number of years, and fraction of a year, of his total service credit in excess of twenty-five years; provided that in no case

issue here, however, has been included in a statute whose other divisions deal with initial pension eligibility requirements, and one reasonable inference therefrom is that such service credit may be used in satisfaction of those eligibility requirements. See generally *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two) ("[s]tatutes relating to the same matter or subject, although passed at different times and making no reference to each other, are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent"); *Volan v. Keller*, 20 Ohio App. 2d 204, 206, 253 N.E.2d 309, 310 (Jefferson County 1969) ("[i]t is a fundamental rule of statutory construction that sections and acts are *in pari materia* and should be construed together when they relate to the same matter, subject or object in a case calling for the application of both").

Moreover, when the General Assembly has intended to distinguish, limit, or otherwise specify the purposes for which purchased service credit may be used by a member of HPRS, it has done so in language that is clear and unequivocal. R.C. 5505.201 provides, for example, that a member of HPRS shall, in computing years of active service in the State Highway Patrol under R.C. 5505.16-18, "be given full credit for time served as a policeman or fireman covered under Chapter 742. and former Chapters 521. and 541. of the Revised Code," provided such member purchases such credit for the amounts thereafter specified. R.C. 5505.202, which authorizes the purchase of service credit for time spent as a member of another state or municipal retirement system, states that in addition to the credit purchased under R.C. 5505.201, a member's total service credit "for purposes of computing the pension payable to him under section 5505.17 or 5505.18 of the Revised Code shall include service credit earned as a member of a state or municipal retirement system," but that any such service credit "shall not be used to determine a member's eligibility for retirement under sections 5505.16 and 5505.17 of the Revised Code." R.C. 5505.202(C). Finally, R.C. 5505.25 authorizes the purchase of military service credit by a member of HPRS, and states that such credit "shall be used in computing the member's years of service for purposes other than meeting the minimum number of years of service necessary in order to qualify under section 5505.16 of the Revised Code to receive a pension under this chapter," R.C. 5505.25(A). That the General Assembly has not similarly qualified, restricted, or specified the purposes for which interrupted military service credit purchased under R.C. 5505.16(D) may be used indicates that such service credit as is included as part of a member's total service may be used to compute both the member's years of service in determining his initial eligibility for a pension under R.C. 5505.16(A) or R.C. 5505.16(B), and the amount of pension to be paid to such member under R.C. 5505.17 or R.C. 5505.18.

shall his pension exceed seventy-two per cent of his final average salary.

R.C. 5505.18(B) also states as follows:

(1) A member whose retirement on account of disability incurred in the line of duty shall receive the applicable pension provided for in section 5505.17 of the Revised Code, except that if the member has less than twenty years of contributing service, his service credit shall be deemed to be twenty years for the purpose of this provision. In no case shall his disability pension be less than sixty per cent or exceed seventy-two per cent of his final average salary.

(2) A member whose retirement on account of disability incurred not in the line of duty shall receive the applicable pension provided for in section 5505.17 of the Revised Code, except that if the member has less than twenty years of contributing service, his service credit shall be deemed to be twenty years for the purpose of this provision. In no case shall his disability pension exceed seventy-two per cent of his final average salary.

In your second question you ask whether a member of HPRS may purchase military service credit under R.C. 5505.25(A) to be used toward the twenty-five year minimum requirement of R.C. 5505.16(A). R.C. 5505.25(A) states, in pertinent part, that military service credit purchased under R.C. 5505.25 shall be used in computing a member's years of service for purposes "other than meeting the minimum number of years of service necessary in order to qualify under section 5505.16 of the Revised Code to receive a pension under this chapter." In particular, you wish to know whether the "minimum" of R.C. 5505.16 referred to in the foregoing language is to be interpreted as designating the twenty year minimum of R.C. 5505.16(B), but not the twenty-five year minimum of R.C. 5505.16(A). Such an interpretation would permit a member of HPRS to use military service credit purchased under R.C. 5505.25(A) in satisfaction of the twenty-five years of service requirement of R.C. 5505.16(A).

I find that I am unable to concur in the foregoing interpretation of the language of R.C. 5505.25(A). Instead, I am of the opinion that the reference in R.C. 5505.25(A) to R.C. 5505.16's "minimum number of years of service" includes the twenty-five year minimum of R.C. 5505.16(A) and the twenty year minimum of R.C. 5505.16(B). The language of R.C. 5505.25(A) refers to the minimum number of years of service necessary to qualify "under section 5505.16 of the Revised Code," and does not expressly distinguish among the separate divisions of R.C. 5505.16, from which one may reasonably conclude that the minimum of R.C. 5505.16 referred to in R.C. 5505.25(A) means any minimum enumerated in any of the separate divisions of R.C. 5505.16.

It is, therefore, my opinion, and you are advised that:

1. Interrupted military service credit purchased by a member of the Highway Patrol Retirement System pursuant to R.C. 5505.16(D) may be used in calculating the member's twenty-five years of service under R.C. 5505.16(A) or the member's twenty years of service under R.C. 5505.16(B) for purposes of determining such member's eligibility to apply for and receive a pension.
2. Military service credit purchased by a member of the Highway Patrol Retirement System pursuant to R.C. 5505.25(A) may not be used in satisfaction of any of the minimum service requirements set forth in R.C. 5505.16 for purposes of determining such member's eligibility to apply for and receive a pension.