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1. EMPLOYES RETIREMENT SYSTEM, PUBLIC—SECTION 486-57 G. C. SOLE AUTHORITY FOR RESTORATION OF ANNUITY RIGHTS FOR MEMBERS, UNITED STATES EMPLOYMENT SERVICE, EMPLOYED BY STATE PRIOR TO JANUARY 1, 1942.
2. EFFECTIVE DATE OF SECTION 486-65b G. C. RENDERED STATUTE INOPERATIVE AS TO RESTORATION OF ANNUITY RIGHTS OF EMPLOYES, REFERENCE BRANCH 1, SYLLABUS.
3. WHERE TWO STATUTES OF THE GENERAL CODE ARE IN DIRECT CONFLICT, STATUTE WITH MOST RECENT EFFECTIVE DATE IS CONTROLLING.

SYLLABUS:

1. Section 486-57, General Code, contains the sole authority for restoration of annuity rights in the Public Employes Retirement System for members of the United States Employment Service, who had been employed by the state prior to January 1, 1942.
2. The effective date of Section 486-65b, General Code, rendered the statute inoperative in so far as the restoration of annuity rights of employees referred to in paragraph 1 of the syllabus are concerned.
3. Where two statutes of the General Code are in direct conflict, the statute with the most recent effective date is controlling.

Columbus, Ohio, March 25, 1949

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

Dear Sir:

I have before me your request for my opinion, reading as follows:

“A question has been raised as to the interpretation of one of the provisions of Section 486-65b, and therefore we ask for your opinion.

“Sentence two of this particular section provides that members of the Retirement System, who claimed a refund of contributions made to the System prior to the time that the Employment Service was placed under the jurisdiction of the Federal

Government (on January 1, 1942), 'may, within sixty days after their return to the state service from the United States Employment Service, restore to the retirement fund, such accumulated contributions with interest, as provided in Section 486-57 of the General Code, and thereafter be entitled to all the benefits of this act.'

"It has been contended that the sixty day reference in this section is in direct conflict with the provisions of Section 486-57, which at the time of the enactment of Section 486-65b provided that contributions withdrawn by a member be restored in five years; the five year period was extended to seven years by the last session of the General Assembly.

"It appears also that a further discrepancy exists, due to the fact that while Section 486-65b was enacted by the 96th General Assembly, it did not become effective until sometime in March, 1947, which latter date was more than sixty days subsequent to the time that the Employment Service was returned to the State from the Federal Government. For these reasons, we kindly request your opinion and interpretation."

A somewhat similar question had come to the attention of the Attorney General on a previous occasion. On April 8, 1947, in opinion No. 1754 it was decided that Section 486-65b, General Code, was inoperative. As noted in your letter, the statute reads that "those who withdrew their accumulated contributions from the retirement system at the time of their separation from the state service, may, within 60 days after their return to the state service from the United States Employment Service, restore to the retirement fund such accumulated contributions with interest, as provided in Section 486-57 of the General Code, and thereafter be entitled to all the benefits of this act." The Employment Service was returned to the state on November 16, 1946. Section 486-65b, however, did not become effective until March 14, 1947. The sixty day period referred to in the act expired, therefore, before the act became effective. In reference to this situation opinion No. 1754 comments as follows:

"We are, consequently, confronted with the anomalous situation where a right clearly intended to be given under the act can not be exercised because the time during which action had to be taken in order to exercise such right before the law granting it became effective. In other words, during the sixty day period immediately following the return of the former members of the Retirement System to the state service there was no law in effect granting them the rights conferred by Section 486-65b, General Code, and consequently, since said section limits the time for the

exercise of the rights conferred under it to a period which has elapsed before the effective date of the section, the accomplishment of its object becomes impossible. In view of this, there seems to be no means of escape from the situation other than to declare the part of the statute here under consideration impotent as an operating force to grant the right set out therein."

Section 486-57, General Code, on the other hand, at the time of writing the opinion referred to above, provided that a former member of the System who had left the state service and withdrawn his accumulated contributions, could, upon returning to State service within five years, be restored to his annuity rights by restoring the withdrawn contributions. Since the State Employment Service was transferred to the United States Government on January 1, 1942, and most state employes entered the employ of the United States Government on or about that time, these employes had until approximately January 1, 1947, to restore their rights by virtue of this statute. Since the writing of that opinion, Section 486-57 has been amended to extend the period to seven years. By applying the same logic of opinion No. 1754, it is evident that these former employes had until approximately January 1, 1949, to restore their rights.

Assuming that Section 486-65b did have some operative effect, thereby giving rise to a direct conflict with Section 486-57, the conflict would be resolved in favor of Section 486-57 because this section became effective on June 5, 1947, almost three months later than the effective date of Section 486-65b. When two statutes are in direct conflict, it is the settled rule that the statute with the most recent effective date is controlling, since it is presumed that such was the intent of the legislature.

In specific answer to your request it is my opinion that no conflict exists between Section 486-57 and Section 486-65b, since Section 486-65b has no operative effect. Those former state employes, therefore, wishing to restore their rights, must comply with Section 486-57. In applying this section to members of the United States Employment Service, it is my opinion that the employe's rights of restoration ceased on or about January 1, 1949, which date is seven years after the transfer of these employes from state to federal service.

Respectfully,

HERBERT S. DUFFY,
Attorney General.