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1. FIREMEN'S RELIEF AND PENSION FUND—POLICE RELIEF AND PENSION FUND—WORD "SALARY" SHOULD BE LIBERALLY CONSTRUED—COMPENSATION FOR OVERTIME SERVICE—PAID BY MUNICIPALITY—COMPENSATION SUBJECT TO DEDUCTIONS PROVIDED BY SECTIONS 741.12, 741.43 RC.
2. CHIEF OF POLICE OR MEMBER OF POLICE DEPARTMENT—APPOINTED BY COURT AS BAILIFF—SALARY SUBJECT TO DEDUCTION AND PAYMENT TO POLICE RELIEF AND PENSION FUND.
3. CHIEF OF POLICE OR MEMBER OF POLICE FORCE OF CITY—WITHIN POLICE RELIEF AND PENSION FUND—BARRED FROM MEMBERSHIP IN PUBLIC EMPLOYEES RETIREMENT SYSTEM—SECTION 145.02 RC.

## SYLLABUS:

1. The word "salary" used in Section 741.12, Revised Code, relative to the Firemen's Relief and Pension Fund, and in Section 741.43, Revised Code, relative to the Police Relief and Pension Fund, should be liberally construed, and includes compensation received by policemen and firemen for overtime service pertinent to their duties as rendered to and paid for by the municipality, and such compensation is subject to the deductions provided by the said statutes for the benefit of such fund.

2. Where the chief of police or member of the police department of a city, in which a municipal court is situated, is appointed by the court as bailiff of said court, pursuant to Section 1901.32 of the Revised Code, the salary paid to such officer for his service as such bailiff is subject to the deduction and payment to the Police Relief and Pension Fund as provided by Section 741.43, Revised Code.

3. A chief of police or member of the police force of a city who comes within a police relief and pension fund, is barred by the provisions of Section 145.02, Revised Code, from membership in the public employes retirement system, and no deductions from the salary of such police officer acting under appointment as bailiff of a municipal court, may be made for the benefit of such public employes retirement fund.

Columbus, Ohio, October 22, 1954

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen :

I have before me your letter requesting my opinion and reading as follows:

"I am enclosing a letter received from our examiner at Circleville, in which he asks the following questions:

'1. Under the provisions of Sections 741.12 R. C. and 741.43 R. C., relative to deduction of 4% from the *salaries* of police officers and fire department employes for pension fund contributions, where police officers and fire department employes work overtime and are paid for overtime, in addition to their regular salary, should the four percent deduction for pension fund contributions be made both from their regular salary and from their overtime pay, and be paid into the respective pension funds by the municipal treasurer?

'2. Where the chief of police or a police officer has been appointed as municipal court bailiff, as permitted by Section 1901.32 of the Revised Code, shall the four percent deduction provided for by Section 741.43 R. C. be made from the amount paid for services rendered as the bailiff of the municipal court? "

Letter from the examiner is enclosed:

"Another question arises in this connection, where the chief of police or a police officer has been appointed to serve as bailiff of the municipal court, and has been allowed additional salary for the additional services rendered as bailiff, as follows:

'3. If the answer to the second question is in the negative, should deductions be made from the salary paid to the chief of police or the police officer, in addition to his salary as a member of the police department, for services rendered as bailiff of the municipal court, in the amount of six percent, as provided in the Public Employment Retirement System statute, to be paid to the Public Employes Retirement System?'

"We will appreciate your giving these questions your earliest attention, as they have arisen more than once in the course of our examinations of the accounts and records of the numerous municipalities in the State of Ohio."

I. Section 741.12, Revised Code, reads as follows:

“In each municipal corporation in which there is established a firemen’s relief and pension fund, the treasurer of the municipal corporation shall deduct from the salary of each member of the fire department an amount equal to four per cent of his salary for each payroll period. The sums so deducted shall be credited to such fund.”

A substantially identical provision is made in Section 741.43, Revised Code, for the deduction from the salary of each member of the police department.

Your question appears to me to presuppose that the overtime work performed by police officers and members of the fire department would be work pertaining to their duties as such officers and firemen, but occupying time in addition to that covered by their regular salaries. If you have reference to extraneous duties that might be assigned to any of these officers and firemen, which are unrelated to policemen’s or firemen’s duties, then I think that as to such outside duties, discussion is quite unnecessary, and it may be concluded that they have no relation to the police and firemen’s pension funds. The same elimination may well be made as to the earnings of police officers who are at times employed by private persons or firms for special police duties. I am therefore confining the discussion of your first question to the persons who constitute the police department and the fire department, respectively, of a municipality, and whose service is performed for the municipality. The only question presented here is whether compensation paid by the municipality to policemen and firemen for services as such, not covered by their regular salaries, is to be considered in making the deductions and contributions to the respective pension funds, as provided for in the sections above quoted.

The general statutes relating to municipalities authorize the council to fix the salaries and compensation of all of its officers and employes. Note Section 731.08, Revised Code, providing: “\* \* \* the legislative authority of a city, by ordinance or resolution, shall determine the number of officers, clerks, and employes in each department of the city government, and shall fix by ordinance or resolution their respective *salaries and compensation* \* \* \*.” Similar provision as to villages is found in Section 731.13, Revised Code. These statutes are certainly broad enough to include the salaries and compensation of members of the police and fire department.

But there is nothing in the wording of the statute which requires the compensation of an employe to take the form of an annual salary. It is conceivable that the compensation of a policeman might be fixed on a daily basis, or of a fireman on the basis of a stipulated amount per run.

The difference, if any, in meaning between the words "salary" and "compensation" has been the subject of much discussion and adjudication. The word "salary" in its ordinary signification is defined by Webster, as follows:

"The recompense or consideration paid, or stipulated to be paid, to a person at regular intervals for services; fixed regular wages, as by the year, quarter, or month."

Reference to Words and Phrases, will disclose a number of cases in which that general definition is recognized. But frequently the courts define the word as covering all forms of recompense for services. In many of these cases "compensation and salary" are considered as synonymous. It seems to me manifest that "compensation" is a broader term, and includes other payments to employes, such as scale of wages or fees, or special allowances.

However, in any case where a member of the police department performs duties connected with his work which are in excess of his regular duties, and is therefore entitled to additional compensation, such additional compensation could only be such as has been predetermined by the council and regardless of what it is called it could well be regarded as additional salary. I know of no instance in which policemen or firemen would be called upon for extra service in the regular line of their work, and be entitled to compensation therefor, unless it has been so provided by resolution or ordinance of council fixing the scale. Accordingly, it appears to me that we may well consider that where a policeman or fireman, in addition to the regular duties of his position is called upon to perform extra service as such officer and is paid for his overtime service according to the scale fixed by the council, such additional compensation would properly be considered and included in determining the amount of salary and the deduction benefits to be paid by the police and firemen's pension systems. I can see no reason why the legislature should have undertaken to curtail a policeman or fireman's contributions to, and benefits from such pension system. Having in mind the beneficial purpose of the laws relative to these pensions. I think we are warranted in giving

a liberal interpretation to the language used by the statutes in referring to "salary," and in construing that term as including all sums paid to police and firemen pursuant to the ordinances of council for their services as such. This would not, in my opinion be inconsistent with the provisions of Sections 741.18 and 741.49, Revised Code, which base the amount of benefits to be paid on the "total annual salary" in certain years, for by the same reasoning, the "total annual salary" would be the total amount earned and paid in such year, including any extra payments for overtime.

There have been many decisions of the courts and opinions of this office dealing with the meaning of the words "salary" and "compensation" as affected by Section 20 of Article II of the Constitution which reads:

"The General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

Neither the courts nor the several attorneys general who have dealt with questions arising under this constitutional provision, have established a very decisive standard. See *Thompson v. Phillips*, 12 Ohio St., 617; *Gobrecht v. Cincinnati*, 51 Ohio St., 68; *State ex rel. v. Raine*, 49 Ohio St., 580; *State ex rel. Lueders v. Beaman*, 106 Ohio St., 651; *State ex rel. Boyd v. Tracy*, 128 Ohio St., 242; *State ex rel. De Chant v. Kelser*, 133 Ohio St., 429. In Opinion No. 387, Opinions of the Attorney General for 1945, page 473, it was held that the words "compensation" and "salary" as used in Section 20 of Article II of the Constitution, are used interchangeably. That opinion reviews all of the above cases and quotes from the opinion in the Kelser case, where the court, after referring to the case of *State ex rel. v. Raine*, supra, said:

"This case is cited for the sole and only purpose of showing that the terms 'salary' and 'compensation' do not mean a thing when cases of this character are being considered, the whole question being, *'Can the number of dollars payable to an incumbent of a public office be increased by the enactment of a statute during his term of office?'*" (Emphasis added.)

Of course, we are not here concerned with any constitutional question, but I have referred to the above cases and opinions in support of my conclusion that the word "salary" may, for the purposes of the statutes relating to police and firemen's pensions, be construed to include any

compensation lawfully paid for additional or overtime services relating to their respective positions.

2. Your second question relates to the chief of police or a police officer who is appointed as a municipal court bailiff, and the question is whether or not his compensation received for services as such bailiff is to be included in the salary reduction provided for by Section 741.43, Revised Code. In the general Municipal Court Act it is provided in Section 1901.32:

“The bailiffs and deputy bailiffs of a municipal court shall be provided for, and their duties are as follows:

“(A) The court shall appoint a bailiff who shall receive such annual compensation as the court prescribes payable in semimonthly installments from the same sources and in the same manner as provided in section 1901.11 of the Revised Code. The compensation of the bailiff shall not exceed that of the clerk of the municipal court. The court may provide that the chief of police of the city or a member of the police force be appointed by the court to be the bailiff of said court. Before entering upon his duties the bailiff shall take an oath to faithfully perform the duties of the office and shall give a bond of not less than three thousand dollars, as the legislative authority prescribes, conditioned for the faithful performance of his duties as bailiff.”

This section, as will be noted, provides for a bailiff as an officer of the court, who is to receive such annual compensation as the court prescribes, and authorizes the court to appoint as such bailiff either the chief of police of the city or a member of the police force. Manifestly, if the court does appoint such chief of police or a member of the police force of the city, he will receive a salary, to be fixed by the court for his services as such, but it is to be noted that he does not vacate his position of chief of police or member of the police force, but appears to assume additional duties and to be entitled to an additional salary. He does not thereby cease to be a member of the police pension fund. The language of Section 741.43 *supra*, requiring a deduction from his salary for the benefit of the fund requires such deduction to be made from his salary for each payroll period and does not limit that deduction to any particular fund. If, therefore, he is drawing two salaries from two independent funds, it would appear that the deduction must be made from each of those funds.

That it was the legislative intent to make the police department an arm of the municipal court, is further indicated by paragraph (D) of Section 1901.32 *supra*, which reads in part as follows:

“(D) Every police officer of any municipal corporation or police constable of a township within the territory is ex officio a deputy bailiff of the court in and for the municipal corporation or township within which he is commissioned as such police officer or police constable, and shall perform such duties in respect to cases within his jurisdiction as are required of him by a judge of said court or by the clerk or bailiff or deputy bailiffs thereof, *without additional compensation.* \* \* \*”

(Emphasis added.)

Taking the two provisions together, therefore, it seems clear to me that the legislature intended to make the entire police department of the city where a court is located, available to the service of the court, with additional compensation to be paid for the services of the chief or member of the force when appointed as *bailiff*, but requiring all police officers to perform such duties as *deputy bailiff* as the court may require “*without additional compensation.*” The source of the funds required to pay the compensation of the bailiff, when so appointed, is that provided in Section 1901.11, Revised Code, to wit: three-fifths by the city and two-fifths by the county.

Accordingly, it is my opinion that the salaries of a chief of police or member of the police department paid for services as bailiff of the municipal court pursuant to Section 1901.32, Revised Code, are subject to the four percent deduction for the benefit of the police pension fund as provided by Section 741.43 of the Revised Code.

3. The answer just given may seem to make it unnecessary to consider your third question. However, I find further support for the answer given to your second question in Section 145.02, Revised Code, relating to the Public Employees Retirement System. That section reads:

“‘Public employees’ does not include those persons who come within any retirement system established under the laws of this state or under any charter, other than the public employees retirement system. Sections 145.01 to 145.57, inclusive, of the Revised Code do not apply to a police relief and pension fund or a fireman’s relief and pension fund. No employee except one who comes within a police relief and pension fund or a fireman’s relief and pension fund shall be excluded from membership in the public employees retirement system because of membership in any other retirement system established under the laws of this state or under any charter unless such employee is contributing to such other retirement system on the basis of the maximum salary set as a limitation by such other retirement system, or unless

he is receiving a disability allowance from such other retirement system.”

This section seems to make it quite plain that a person who “comes within” a police relief and pension fund cannot be a member of the public employes retirement system. It was so held in Opinion No. 935, Opinions of Attorney General for 1939, page 1297 :

“Members of the public employees retirement system who become entitled to participate in a firemen’s relief and pension fund established pursuant to the mandatory provisions of Section 4600 and related sections of the General Code are, by the terms of Section 486-33c, excepted from the provisions of the public employees retirement act and are not eligible for membership in the public employees retirement system.”

That conclusion was approved in Opinion No. 2327, Opinions of the Attorney General for 1947, page 542, and again in my Opinion No. 4013, issued June 28, 1954.

Accordingly, unless the service and salary of a policeman as bailiff in the municipal court is to be considered as related to the police pension system he can have no benefit based on his service as bailiff, by way of retirement allowance from any fund; which, in my opinion would be out of accord with the evident purpose of the law to provide retirement and other benefits for all classes of public employes.

In specific answer to the questions which you have submitted it is my opinion :

1. The word “salary” used in Section 74I.12, Revised Code, relative to the Firemen’s Relief and Pension Fund, and in Section 74I.43, Revised Code, relative to the Police Relief and Pension Fund, should be liberally construed, and includes compensation received by policemen and firemen for overtime service pertinent to their duties as rendered to and paid for by the municipality, and such compensation is subject to the deductions provided by the said statutes for the benefit of such fund.

2. Where the chief of police or member of the police department of a city in which a municipal court is situated, is appointed by the court as bailiff of said court, pursuant to Section 190I.32 of the Revised Code, the salary paid to such officer for his service as such bailiff is subject to the deduction and payment to the Police Relief and Pension Fund as provided by Section 74I.43, Revised Code.



3. A chief of police or member of the police force of a city who comes within a police relief and pension fund, is barred by the provisions of Section 145.02, Revised Code, from membership in the public employes retirement system, and no deductions from the salary of such police officer acting under appointment as bailiff of a municipal court, may be made for the benefit of such public employes retirement fund.

Respectfully,

C. WILLIAM O'NEILL

Attorney General