

**OPINION NO. 89-066****Syllabus:**

Persons who receive a pension or disability benefit under R.C. Chapter 5505 are entitled, upon receiving such benefit for twelve months, to an additional benefit under R.C. 5505.174 based upon the accumulation of excess Consumer Price Index percentages that occurs between the time those persons receive their initial benefit and the time those persons attain age sixty-two.

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

**By: Anthony J. Celebrezze, Jr., Attorney General, September 6, 1989**

You have requested my opinion regarding the application of certain language in R.C. 5505.174, which governs cost of living adjustments in the amounts of pensions and benefits paid to persons by the Highway Patrol Retirement System (HPRS). R.C. 5505.174 reads as follows:

(A) The following persons are eligible to receive an additional benefit under this section:

(1) Persons sixty-two years old or older who are receiving pensions pursuant to section 5505.16 or 5505.17 of the Revised Code;

(2) Persons sixty-two years old or older who are receiving disability retirement benefits pursuant to section 5505.18 of the Revised Code;

(3) Persons receiving survivor's benefits pursuant to section 5505.17 of the Revised Code.

(B) On the fifteenth day of September of each year the state highway patrol retirement board shall determine the average percentage increase, if any, in the consumer price index prepared by the United States bureau of labor statistics (U.S. City Average for Urban Wage Earners and Clerical Workers: All Items 1967) for the twelve-month period prior to the first day of January over the next

preceding twelve calendar month period, as reported by the bureau. Upon a determination by the board that such increase equals or exceeds three per cent, the board shall increase all benefits payable under this section by three per cent. *Any percentage above three per cent shall be accumulated and combined with the percentage of any increase in succeeding years.*

The first additional benefit is payable to all persons becoming eligible on or after November 18, 1981 upon such person's receiving a pension or benefit for twelve months. The additional benefit is payable for each ensuing twelve-month period or until the next increase is granted under this section, whichever is later.

The date of the first additional benefit paid under this section shall be the anniversary date for future additional benefits. The pension or benefit used in the first calculation of an additional benefit under this section shall remain as the base for all future additional benefits paid under this section, unless a new base is established.

Additional benefits paid in years subsequent to the year of the first additional benefit paid under this section shall be paid to all persons who, on the date that the additional benefit is authorized by the board, have been receiving a pension or benefit for twelve months.

The board shall adopt, and may amend or rescind, any rule necessary to carry out this section. (Emphasis added.)

Provisions substantially identical to R.C. 5505.174 appear in R.C. 145.323, R.C. 3307.403, and R.C. 3309.374 with respect to pensions and benefits paid to persons by the Public Employees Retirement System (PERS), the State Teachers Retirement System (STRS), and the School Employees Retirement System (SERS) respectively, pursuant to the terms of R.C. Chapters 145, 3307, and 3309. See 1987 Op. Att'y Gen. No. 87-044. Unlike R.C. 5505.174, however, R.C. 145.323, R.C. 3307.403, and R.C. 3309.374 do not condition a person's eligibility to receive an additional benefit upon the attainment of a certain age.

R.C. 5505.174 directs the State Highway Patrol Retirement Board, on the fifteenth day of September of each year, to determine the average percentage increase in the Consumer Price Index for the year just ended on the thirty-first day of December over that of the year immediately preceding. R.C. 5505.174(B). If such increase equals or exceeds 3%, the Board shall increase all benefits payable under R.C. 5505.174 by 3%. *Id.* Any excess percentage above the 3% authorized for payment under the statute is to be accumulated and combined with the percentage of increase in the Consumer Price Index in each succeeding year. As you note in your letter, the practical effect of such accumulation is to create a reserve of percentage increases that will increase the likelihood that an additional benefit will be paid under R.C. 5505.174 in those years in which the increase in the Consumer Price Index is less than 3%, which, in turn, may have been intended by the General Assembly to compensate benefit recipients for those years in which the Consumer Price Index increased by more than 3%.

Your question pertains to the language of R.C. 5505.174(B) that provides for the accumulation of excess Consumer Price Index percentages. Specifically, you wish to know whether such accumulation, in the case of an individual retiree, should commence (1) at the time such person first retires, (2) at the time such person begins to receive pension or disability benefits pursuant to the pertinent provisions of R.C. Chapter 5505, or (3) at the time such individual attains age sixty-two and thus becomes eligible to receive an additional benefit under R.C. 5505.174. Your question has been prompted by the fact that a member of HPRS may retire and begin to receive pension or disability benefits under R.C. Chapter 5505 a number of years before such person attains age sixty-two and becomes eligible to receive the cost of living adjustment provided for by R.C. 5505.174. In that regard, 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 years as an employee according to the rules adopted by the State Highway Patrol Retirement Board may make application for a deferred pension which shall not be payable until the member attains the age of fifty-two years. Further, any such member who has attained twenty years of service may, on or after the date he attains forty-eight years of age but before the date he attains fifty-two years, elect to receive a reduced pension in accordance with the schedule

thereinafter provided. *Id.* R.C. 5505.16(C) states that 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 according to the rules adopted by the State Highway Patrol Retirement Board shall file an application for retirement with the Board; such member, however, 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. *See also* R.C. 5505.17(A)(1) (providing that a member of HPRS who retires as provided in R.C. 5505.16 shall receive a life pension in the amount thereinafter specified); R.C. 5505.17(A)(2) (specifying the amount of pension to be paid a member of HPRS with fifteen or more years of total service credit who voluntarily resigns or who is discharged from the State Highway Patrol for any reason except his retirement under R.C. Chapter 5505, death, dishonesty, cowardice, intemperate habits, or conviction of a felony); R.C. 5505.17(A)(3)-(6) (specifying the amount of pension to be paid to the surviving spouse and children of a deceased member of HPRS). In addition, R.C. 5505.18 permits a member of HPRS who becomes totally and permanently incapacitated for duty in the employ of the State Highway Patrol, by reason of a personal injury or disease, to retire, R.C. 5505.18(A), and receive the applicable pension specified in R.C. 5505.17, R.C. 5505.18(B)(1) and (2). Further, R.C. 5505.18 does not limit such disability retirement to persons who have attained a certain age.

A member of HPRS who satisfies the pertinent eligibility requirements set forth in R.C. 5505.16-.18 may, therefore, apply for retirement and begin to receive pension or disability benefits prior to reaching age sixty-two. Upon reaching age sixty-two such individual becomes eligible to receive the additional benefit provided for in R.C. 5505.174. Whether such additional benefit is paid to an HPRS retiree may depend, in part, upon the accumulation of excess Consumer Price Index percentages that results from the annual calculation prescribed by the first paragraph of R.C. 5505.174(B). However, R.C. 5505.174 does not state in explicit terms exactly when such accumulation shall be deemed to have commenced for purposes of determining an individual retiree's entitlement to such additional benefit. Accordingly, you wish to know whether R.C. 5505.174 should be interpreted as permitting the commencement of such accumulation at the time an individual retiree applies for pension or disability benefits, at the time such individual begins to receive those pension or disability benefits, or at the time such individual attains age sixty-two.

In Op. No. 87-044 I was asked a question similar to the one you have raised, and the analysis and conclusions set forth therein provide guidance in resolving your present inquiry. In Op. No. 87-044 I was asked to consider and decide upon two different interpretations of R.C. 145.323, R.C. 3307.403, and R.C. 3309.374, which, as I have already noted, are the statutory counterparts of R.C. 5505.174 with respect to persons who receive pensions, benefits, or other allowances from PERS, STRS, and SERS respectively.<sup>1</sup> Specifically, I was asked whether an individual retiree who first receives a benefit from one of those retirement systems in a year in which the Consumer Price Index increases by less than 3% is entitled to an additional benefit under R.C. 145.323, R.C. 3307.403, or R.C. 3309.374 based upon the accumulation of excess Consumer Price Index percentages that occurred in years prior to the time that such person received his initial benefit payment, or, conversely, whether those statutes should be interpreted as directing such accumulation only from and after the date upon which such retiree received his initial benefit payment. Applying, in

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<sup>1</sup> R.C. 145.323 reads as follows:

All persons receiving an allowance, pension, or benefit under Chapter 145. of the Revised Code may become eligible to receive an additional allowance in accordance with this section.

Beginning April 1, 1971, and each year thereafter, the board of the public employees retirement system shall determine the average percentage change in the consumer price index prepared by the United States bureau of labor statistics (U.S. City Average for Urban Wage Earners and Clerical Workers: All Items 1967) for the twelve calendar month period prior to the

that instance, what I considered to be the pertinent principles of statutory construction,<sup>2</sup> and having given careful thought to the legislative intent underlying the enactment of those particular statutes,<sup>3</sup> I stated that the language of R.C. 145.323, R.C. 3307.403, and R.C. 3309.374 could not reasonably be interpreted as permitting the accumulation of excess Consumer Price Index percentages to commence prior to the time that an individual retirant actually retired and began to receive his benefit payments. Accordingly, I concluded that persons who receive a pension, benefit, or allowance under R.C. Chapters 145, 3307, or 3309 are entitled, upon receiving such allowance, pension, or benefit for twelve months, to increased payments under R.C. 145.323, R.C. 3307.403, or R.C. 3309.374 based upon the

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first day of January over the next preceding twelve calendar month period, as reported by the bureau.

Any percentage above the percentage authorized for the first increased payment shall be accumulated and combined with the percentage of change in the succeeding years. Whenever the balance of this accumulation is equal to or in excess of three per cent, the increased allowance provided in this section shall be paid. When the balance of the accumulation is less than three per cent, no additional increase shall be paid.

(A) Upon a determination by the board in any year that the accumulation of changes in the consumer price index is equal to or in excess of three per cent the board shall increase all allowances and benefits payable under this section by three per cent.

The first increase is payable to all persons becoming eligible after June 30, 1971 upon such persons receiving an allowance for twelve months. The increased amount is payable for the ensuing twelve-month period or until the next increase is granted under this section, whichever is later. Subsequent increases shall be determined from the date of the first increase paid to the former member in the case of an allowance being paid a beneficiary under an option, or from the date of the first increase to the survivor first receiving an allowance or benefit in the case of an allowance or benefit being paid to the subsequent survivors of the former member.

(B) The date of the first increase under this section becomes the anniversary date for any future increases.

The allowance or benefit used in the first calculation of an increase under this section shall remain as the base for all future increases, unless a new base is established.

The board shall make all rules necessary to carry out this section.

The provisions of R.C. 3307.403 and R.C. 3309.374 differ in no material respect from those of R.C. 145.323.

<sup>2</sup> 1987 Op. Att'y Gen. No. 87-044 at 2-287 and 2-288 ("the General Assembly, in enacting a particular statute, is presumed to have intended thereby a just and reasonable result. R.C. 1.47(C). Consonant therewith, it has been stated that ambiguous statutory provisions should be interpreted, if possible, in a manner that permits a logical and reasonable result," and although statutes, as a general matter, "are not to be construed according to principles of equity,...where one construction of a statute would produce equitable results and another inequitable results, the former will generally be adopted if the language of the statute does not preclude such an interpretation") (citations omitted).

<sup>3</sup> *Id.* at 2-288 and 2-289 ("these sections were enacted to permit periodic increases in the amounts of allowances, pensions, or benefits paid to retirees...as a means of ensuring that the purchasing power of such allowances and benefits would, to some extent, keep pace with equivalent increases in the annual cost of living," and such sections were, therefore,

accumulation of increases in the Consumer Price Index that occurs after the date upon which such allowance, pension or benefit is first paid to those persons.<sup>4</sup>

It is a well-established rule of statutory construction that statutes that address or pertain to the same subject matter are to be regarded as *in pari materia*, and thus are to be construed in a similar manner. *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956); *Volan v. Keller*, 20 Ohio App. 2d 204, 253 N.E.2d 309 (Jefferson County 1969); *Beach v. Beach*, 99 Ohio App. 428, 134 N.E.2d 162 (Montgomery County 1955). Clearly, R.C. 5505.174 addresses, in almost identical language, the same subject matter as is addressed by the statutory provisions discussed in Op. No. 87-044. R.C. 5505.174 should, therefore, be interpreted and applied in a manner that is both compatible and consistent with the analysis and conclusions that appear in that opinion. Thus, with respect to your specific question, I conclude that the accumulation of excess Consumer Price Index percentages prescribed by R.C. 5505.174(B) shall, in the case of an individual retirant, commence upon such individual's receipt of a pension or disability benefit pursuant to the pertinent provisions of R.C. Chapter 5505, rather than at the time such person first files an application for retirement with the State Highway Patrol Retirement Board, or at the time such person attains age sixty-two. On the one hand, interpreting R.C. 5505.174 as permitting such accumulation to commence with the filing of an application for retirement but before any benefit is actually paid to a retirant would contravene the reasoning in Op. No. 87-044 specifically rejecting the notion that a retirant should be entitled to draw upon an accumulation of excess Consumer Price Index percentages that occurred during a time when that person was not receiving any pension, benefit, or allowance. *Id.* at 2-289 ("I discern no rational basis for determining the eligibility of recent retirees for current and future increases in benefits under R.C. 145.323, R.C. 3307.403, and R.C. 3309.374 with reference to increases in the cost of living that occurred prior to the time that they actually retired and began receiving retirement benefits"). On the other hand, however, there is nothing in the language of R.C. 5505.174 to compel the conclusion that such accumulation must be delayed until an individual retirant attains age sixty-two and can commence, therefore, only at that time. Insofar as a member of HPRS commences his receipt of pension or disability benefits several years before attaining age sixty-two, interpreting R.C. 5505.174 to permit the accumulation of excess Consumer Price Index percentages to commence at that same time appears both logical and reasonable, notwithstanding the fact that the additional benefit to which that accumulation relates will not be paid until a retirant reaches age sixty-two.<sup>5</sup>

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"intended to mitigate the adverse consequences of inflation that would occur after public employees had retired from public employment and had commenced receiving the allowances, pensions, and benefits otherwise accorded them by law") (citations omitted).

<sup>4</sup> I also provided the following example of how this conclusion would apply in the case of a particular retirant:

Thus, under these sections, a person who retires in August 1987 may become eligible for an increased payment in August 1988 based upon the amount of change in the Consumer Price Index that occurs between calendar years 1986 and 1987, as determined by the retirement systems boards in April 1988. The eligibility of such person for increased payments in years subsequent to 1988 shall be determined by the retirement systems boards based upon the accumulation of changes in the Consumer Price Index commencing in 1987.

Op. No. 87-044 (syllabus).

<sup>5</sup> Legislation enacted recently by the General Assembly provides additional support for this conclusion. Am. Sub. H.B. 340, 118th Gen. A. (eff. Nov. 2, 1989) amends several different provisions in R.C. Chapters 742 (police and firemen's disability and pension fund) and 5505 with

It is, therefore, my opinion, and you are advised that persons who receive a pension or disability benefit under R.C. Chapter 5505 are entitled, upon receiving such benefit for twelve months, to an additional benefit under R.C. 5505.174 based upon the accumulation of excess Consumer Price Index percentages that occurs between the time those persons receive their initial benefit and the time those persons attain age sixty-two.

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respect to pensions and benefits paid to retirants and their survivors or beneficiaries by the Police and Firemen's Disability and Pension Fund and the Highway Patrol Retirement System. As pertains herein, Am. Sub. H.B. 340 amends R.C. 5505.174 for the purpose of reducing the eligibility age in R.C. 5505.174(A)(1) and (2) from sixty-two to sixty, and adding language to R.C. 5505.174(B) that states when the accumulation of excess Consumer Price Index percentages referred to therein shall commence for an individual retirant. Thus, the new second paragraph of R.C. 5505.174(B), as amended by Am. Sub. H.B. 340, reads as follows:

Any percentage above three per cent shall be accumulated and combined with the percentage of any increase in succeeding years. *For each person eligible to receive the additional benefit under this section, the accumulation shall commence on the later of May 6, 1988, or the effective date of the pension, disability retirement benefits, or survivor's benefits he receives.* The increase provided for by this section shall be made whenever the person's accumulation is equal to or greater than three per cent. (Emphasis added.)