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1. PUBLIC EMPLOYES RETIREMENT BOARD—STATE TEACHERS RETIREMENT BOARD—DUTIES AND POWERS IN ADMINISTRATION OF SYSTEMS—PRESCRIBED BY LAW AND ADMINISTERED UNDER PROVISIONS OF STATUTES—SYSTEMS POSSESS NO POWERS EXCEPT THOSE EXPRESSLY GIVEN OR ARE NECESSARILY IMPLIED TO CARRY OUT EXPRESS POWERS GRANTED.
2. RETIREMENT BOARD OF PUBLIC EMPLOYES RETIREMENT SYSTEM MAY NOT RETIRE MEMBER FOR DISABILITY WITH SERVICE CREDIT IN TWO RETIREMENT SYSTEMS WHO HAS LESSER AMOUNT OF SERVICE CREDIT IN PUBLIC EMPLOYES RETIREMENT SYSTEM.
3. NEITHER SYSTEM AUTHORIZED BY LAW TO MAKE SEPARATE MONTHLY PAYMENTS OF ITS PROPORTIONATE SHARE OF DISABILITY ALLOWANCE TO MEMBER RETIRED BY TWO RETIREMENT SYSTEMS JOINTLY.

SYLLABUS:

1. The duties and powers of the State Teachers Retirement Board and the Public Employes Retirement Board in the administration of the State Teachers Retirement System and the Public Employes Retirement System, are prescribed by law and limited by the statutory provision with reference thereto. They possess no power except such as is expressly given or such as is necessarily implied to carry out the express powers granted.

2. The Retirement Board of the Public Employes Retirement System may not retire a member for disability with service credit in two retirement systems who has the lesser amount of service credit in the said Public Employes Retirement System.

3. Neither the Public Employes Retirement System nor the State Teachers Retirement System is authorized by law to make separate monthly payments of its proportionate share of the disability allowance to a member who has been retired by two retirement systems jointly.

Columbus, Ohio, Nov. 16, 1949

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

"The current examination of the State Teachers Retirement System has disclosed information pertaining to the retirement on disability allowance of persons having membership in both the State Teachers Retirement System and the Public employes Retirement System, which indicates that said pension allowances may not be properly determined and authorized in accordance with the provisions of Sections 486-63a and 7896-38a of the General Code.

"We are enclosing a letter received from Mr. R. E. Kirk, State Examiner, setting forth the details pertaining to the granting of disability allowance in one such case.

"Please examine the enclosed letter and the statutes governing the allowance of disability pensions in cases where the person to be retired is a member of the two retirement systems, and give us your formal opinion in answer to the following questions:

"1. May the Retirement Board of the Public Employes Retirement System retire a member for disability with service credit in two retirement systems who has the lesser amount of service credit in the said Public Employes Retirement System?

"2. May each retirement system make separate monthly payments of its proportionate share of the disability allowance to a member who has been retired by two retirement systems jointly?"

The State Teachers Retirement System was enacted into law in 1919. For the administration of the system there was created a retirement board consisting of five members charged with certain duties and powers. Those powers are fixed by Section 7896-3, General Code, which section reads in part as follows:

"The general administration and the management of the state teachers' retirement system and the making effective the provisions of this act (G. C. §§ 7896-1 to 7896-63) are hereby vested in the retirement board which shall have authority to make all necessary rules and regulations, not inconsistent with the provisions of this act, to carry into effect the provisions thereof."

The Public Employes Retirement System was enacted into law in 1937. For the administration of this system there was created a retirement board consisting of seven members charged with certain duties and powers. Those powers are fixed by Section 486-34, General Code, which section reads in part as follows:

“The general administration and management of the public employes retirement system and the making effective of the provisions of this act are hereby vested in a board to be known as the ‘public employes retirement board,’ * * *.”

It is a well established principle of law, evidenced by many cases in this state, that administrative boards created by statute, such as the **State Teachers Retirement Board** and the **Public Employes Retirement Board**, are strictly limited in their powers to the powers granted to them. They possess no power not expressly delegated to them or necessary to carry out the express powers granted.

Section 7896-38a, General Code, provides in part:

“ * * * The retirement board (Teachers Retirement) shall retire such member provided the greatest number of years of service credit is in this system (Teachers Retirement System) and each of the other retirement systems (School Employes Retirement System and Public Employes Retirement System) shall pay to this system at least annually its proper proportionate share of such allowance based upon the ratio that the total service credit in either or both of the other systems is to the total service credit in all systems.” (Parenthetical matter added.)

Section 486-63a of the General Code, provides in part:

“ * * * The retirement board (Public Employes) may retire such member provided the greatest number of years is in this system (Public Employes Retirement System) and each of the other retirement systems (State Teachers Retirement System and School Employes Retirement System) shall pay to this system at least annually its proper proportionate share of such allowance based upon the ratio that the service credit in either or both of the other systems is to the total service credit in all systems. * * *” (Parenthetical matter added.)

When the law expressly provides for the manner of administering the State Teachers Retirement System and the Public Employes Retirement System, the retirement boards have no powers whatever with respect to the particular manner of so administering same other than to carry out the express mandate of the Legislature.

The language of Sections 7896-38a and 486-63a, General Code, above quoted, is clear as to what board shall retire a member who has service credit in other systems and also as to the method of paying the proper proportionate share to the recipient of such allowance.

In view of the foregoing, it is, therefore, my opinion that :

1. The Retirement Board of the Public Employes Retirement System may not retire a member for disability with service credit in two retirement systems who has the lesser amount of service credit in the said Public Employes Retirement System.

2. Neither the Public Employes Retirement System nor the State Teachers Retirement System is authorized by law to make separate monthly payments of its proportionate share of the disability allowance to a member who has been retired by two retirement systems jointly.

Respectfully,

HERBERT S. DUFFY,
Attorney General.