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TOWNSHIP TRUSTEE—OFFICE NOT FULL TIME SALARIED
OFFICE—SECTION 486-59 G. C.

SYLLABUS:

The office of Township Trustee is not a full-time salaried office within the provisions of Section 486-59 of the General Code.

Columbus, Ohio, March 1, 1947

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

Dear Mr. Schneider:

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

“We kindly request your opinion whether this Board should hold in abeyance a retirement allowance of a pensioner who has been elected Township Trustee.

The particular case in question involves Mr. S. who prior to his retirement on an allowance on December 31, 1940 was

employed by Perry County. The allowance of \$21.31 per month has been paid since that time. Upon learning that Mr. S. had been elected Township Trustee, the regular monthly allowance was suspended by our office in January in view of the provision of Section 486-59, General Code.

The question has now been raised whether we were justified in holding the allowance in abeyance since it is contended that the position of Township Trustee should exclude Mr. S. from the provisions of Section 486-59, General Code. We, therefore, request your opinion whether the allowance should be held in abeyance in the case of Mr. S."

Section 486-59, General Code, being a part of the act governing the public employes retirement system, provides in part as follows:

"In the event any retired pensioner, after such retirement, is elected to a full-time salaried office by the electors of the state or any political subdivision thereof at any election, such pensioner, by the acceptance of any such office shall not forfeit his pension but the same shall be held in abeyance during the period such pensioner so holds such office and receives the salary therefor."

The above provisions would clearly dispose of your question unless the office of Township Trustee is not a "full-time salaried office."

Section 3268, General Code, relative to the election and term of office of a Township Trustee, reads as follows:

"Two trustees shall be elected at the general election in 1937 and quadrennially thereafter, in each township, who shall hold office for a term of four years, commencing on the first day of January next after their election. One trustee shall be elected at the general election in 1937 in each township who shall hold his office for a term of two years, commencing on the first day of January next after his election. One trustee shall be elected at the general election in 1939 and quadrennially thereafter in each township, who shall hold his office for a term of four years, commencing on the first day of January next after his election."

I do not deem it necessary to attempt an enumeration of the duties of a Township Trustee. It is sufficient to say that they are multifarious. The sole question that seems to be the key to the problem you have presented is whether the office of Township Trustee is a "full-time salaried office" within the meaning of that phrase as used in Section

486-59, supra. It is not easy to determine what the General Assembly meant by the use of these words. Elective state offices may safely and reasonably be regarded as full-time salaried offices. Some appointive state offices are plainly full-time and some, such as boards and commissions where the members have limited duties and are paid on a per diem basis for the time actually given, are certainly not.

As to county elective offices general opinion would probably class them as full-time salaried offices, although it is notorious that many of the county officers in the smaller counties spend only a small fraction of their time on their official duties. The General Assembly has seen fit to provide by Section 7181, General Code, that the County Engineer "shall give his entire time and attention to the duties of his office", but I find no similar provision as to any other county officer.

As to municipal and other local offices, the test would appear to depend largely upon the size of the municipality or other subdivision and the amount of the salary, which may be large or small, depending on the amount of time that the officer is expected to devote to a public duty. Thus, it may well be said that the Mayor of a large city who receives \$10,000 or more by way of salary is to be regarded as a full-time officer, while the Mayor of a small city who receives an annual salary of \$500 or less, is certainly not to be regarded as a full-time officer since he probably spends most of his time and makes his principal living in running a business of his own or in some lucrative employment.

Therefore, since there seems to be no legal definition for "full-time salaried office", I think we are justified in determining the question on the basis of common knowledge and good sense. From this standpoint it is certainly obvious to anyone that the clerk or member of council in a small village who devotes one or two evenings in a month to his official duties is not a full-time officer although he is elected for a term of two years. By the same reasoning a Township Trustee who probably devotes not over one-tenth of his time to his official duties is not a full-time officer although he is under the law elected for a term of four years. As to the Township Trustee, we get a further light when we examine the statute fixing his compensation. Section 3294, General Code, provides as follows:

"Each trustee shall be entitled to one dollar and fifty cents for each day of service in the discharge of his duties in relation

to partition fences, to be paid in equal proportions by the parties, and three dollars and fifty cents for each day of service in the business of the township, to be paid from the township treasury. Provided, however, that in townships having a budget of less than ten thousand dollars, the trustees shall be entitled to compensation for not more than one hundred days at said rate of three dollars and fifty cents per day; in townships having a budget of from ten thousand to twenty thousand dollars, the trustees shall be entitled to compensation for not more than one hundred and twenty-five days at said rate of three dollars and fifty cents per day; and in townships having a budget of twenty thousand dollars or over, the trustees shall be entitled to compensation for not more than one hundred and fifty days at said rate of three dollars and fifty cents per day. Each trustee shall present an itemized statement of his account for such per diem and services, which shall be filed with the clerk of the township, and by him preserved for inspection by any persons interested."

Here, it will be noted that no township trustee can be paid by the township for his public service more than for a fixed maximum of days—100 days in the smaller townships and 125 and 150 days in the townships having a larger annual budget. These salaries are not fixed on an annual basis excepting in so far as they are limited to a certain number of days' pay within a year, and it appears to me that there is a very fair inference from the manner in which this salary is fixed and limited that the General Assembly does not expect the Township Trustee to devote any large portion of his time to the duties of his office.

I direct your attention to an opinion of my immediate predecessor, found in 1942 Opinions of the Attorney General, p. 441. Section 486-60, General Code, provided that a retiring employe should receive among other benefits, "(c) an additional pension, if such employe is an original member, equal to one and one-third per centum of his average prior service multiplied by the *number of years* of service in his prior service certificate." Construing this and related sections it was held that the Public Employes Retirement Board, in determining the number of years of prior service which was the measure of the prior service pension, must give credit for the number of years an employe had held an office or appointment which was for a definite number of years and on an annual salary, even though the duties of the office or employment did not require the full time of the employe. In the course of the opinion,

and speaking of village officers who may receive only a nominal salary, it was said:

“We have no means of knowing just how much time these officials put in although we may know as a matter of fact that they do not devote their entire time to the office. There is no justification, however, for saying as a matter of law that they are not on duty at all times. Rather, there is justification for saying that these officials are on duty at all times, and oftentimes they put in considerable time outside of regular business hours in consultation with their constituents or making investigations of one kind or another, * * *

The law definitely contemplates in my opinion, that the service to be credited as prior service for members of the retirement system, should be computed and credited on the basis of years, and there will be found no place in the law where it is provided or even suggested that a full year of service should not be allowed either as prior service or current service, to an elected official for each year of a term for which he is elected and serves, even though as a matter of fact, he may not devote his entire time to the office.”

That opinion may be accepted as sound as the law then stood, since it was provided in Section 486-33b that the service of all employes within the scope of the system prior to January 1, 1935, should be included as prior service. However, at the next session of the General Assembly that section was amended by adding:

“Provided, however, that if the Public Retirement Board shall determine that a position as such employe in any one calendar year was a *part time position*, the retirement board shall have the authority to determine what fractional part of a year's credit shall be given.”
(Emphasis added.)

Here, the General Assembly recognized without attempting to define the difference between a “full-time” and a “part-time” position. In your statement of facts it appears that in 1940 the officer in question was retired on an allowance of \$21.31 per month and that he has now been elected a Township Trustee. In this latter position the maximum he can possibly receive if he serves the largest number of days for which he can be paid is from \$350 to \$525 per annum, equal to \$27.50 to \$41.25 per month, depending upon the budget of his township. Believing that one of the purposes of the institution of the retirement system was to enable a retired employe to live without becoming an object of charity,

i am loath to believe that it was the intention of the General Assembly to cause this man's retirement allowance to be held in abeyance merely because he had been elected to a minor office which yields a mere pittance by way of salary. There may be reason in the provision in question, if he is elected to a position which carries with it a substantial salary based on full-time service.

If the offices of Township Trustee or Village Clerk or Village Councilman are "full-time" offices, we may well inquire what there is left of elective offices that could be classed as "part-time."

In specific answer to your question it is my opinion that the office of Township Trustee is not a full-time salaried office within the provision of Section 486-59 of the General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.