

The lease is accompanied by contract encumbrance record No. 8 which has been executed in proper form and which shows that there are unencumbered balances in the appropriation account sufficient in amount to pay the monthly rental under this lease for February, 1938. This is a sufficient compliance with the provisions of Section 2288-2, General Code. This lease is accordingly approved by me and the same is herewith returned to you.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2009.

STATE EMPLOYEES RETIREMENT BOARD—STATE EMPLOYEE MEMBER ELECTED FOR TERM OF TWO YEARS—CONTINUES TO HOLD OFFICE UNTIL FIRST COUNTY EMPLOYEE MEMBER IS ELECTED AND QUALIFIED—SEE AMENDED SECTION 486-37 GENERAL CODE, EFFECTIVE APRIL 17, 1938.

SYLLABUS:

The state employe member of The State Employes Retirement Board who was elected on the First Monday of October, 1937, for a term of two years beginning January 1, 1938, will continue to hold his office until the first county employe member is elected and qualified as provided by Amended Section 486-37, General Code, effective April 17, 1938.

COLUMBUS, OHIO, March 4, 1938.

HON. J. C. WOODARD, *Warden Ohio Penitentiary, Columbus, O.*

MY DEAR WARDEN WOODARD:—I am in receipt of your communication of recent date, viz:

“I have been elected by the state employees to the State Employees Retirement System. This date of service began on January 1, 1938 and was for a two year period. Subsequent to January 1st the law was passed amending the law under which I was elected to this Board. I am anxious to know when my term expires by reason of this new law.

“Will you please give me your opinion on the period of my office?”

Yours is a statutory office. The General Assembly created it and the General Assembly can abolish it. Your concern is whether your official term has been abolished in toto or in part.

The board of which you were chosen a member was created under favor of Section 486-34, General Code, originally Amended Senate Bill No. 281, passed by the 90th General Assembly, effective October 19, 1933. You were elected as an employe member of such board on the First Monday of October, 1937, for a term of two years beginning on the First day of January, 1938, with authority to hold your office until your successor was elected and qualified, under the provisions of Section 486-37, General Code, likewise a part of Amended Senate Bill No. 281, as amended and supplemented by Amended Senate Bill No. 253, 92d General Assembly.

Had this legislation not been disturbed, you would have held your office until January 1, 1940, and until your successor was elected and qualified, but along came the 92nd General Assembly and enacted Amended House Bill No. 776, effective April 47, 1938, and specifically repealed Sections 486-34 and 486-37, General Code, the sections creating your office and providing for your election, and by this repeal down went the official structure of your former board and all offices created thereunder were ipso facto abolished and a new board was created. By this last Act the name of the system was changed from “The State Employes Retirement System” to “The Public Employes Retirement System” and “The State Employes Retirement Board” was changed to “The Public Employes Retirement Board.”

Instead of five members, the new board, as provided by Amended Section 486-34, General Code, makes provision for six members, as follows, “the attorney general, the auditor of state, the chairman of the civil service commission and three other members known as employe members, one of whom shall be a state employe member * * * who shall be elected by ballot by the state employe members * * * from among their number, another of whom shall be a county employe member * * * and who shall be elected by ballot by the county employe members * * * and another of whom shall be a municipal employe member * * * who shall be elected by ballot by the municipal employe members.”

It is readily seen that it was the legislative intent to bring county and municipal employes within the fold. If they were brought in they had to be given representation, and while it was evidently the legislative purpose to keep the board membership at a minimum, it was apparent

that if the attorney general, auditor of state and chairman of the civil service commission were retained on the board, the membership had to be increased to six members, and if counties and municipalities were to be given representation, some one had to go, and the General Assembly concluded and to that end provided that it should be one of the state employe members.

Having abolished your office by repeal of the statute creating it, they did give it recognition and resurrect it to the extent provided in the first paragraph of

Section 486-37, General Code:

“* * * The election for the state employe member of the retirement board shall be held on the first Monday in October in each even numbered year, beginning in 1938, for a term of two years starting on the first day of January following such election. The first election for the county employe member of the retirement board shall be held immediately following the passage of this act for a term ending December 31, 1939, and thereafter the elections for the county employe member of the retirement board shall be held on the first Monday in October in each odd numbered year, for a term of two years starting on the first day of January following such election. The term of office of the second and most recently elected state employe member of the state employes retirement board shall terminate upon the election of the county employe member of the public employes retirement board. The first election for the municipal employe member of the retirement board shall be held immediately after the passage of this act, for a term to end December 31, 1938. Thereafter the election for the municipal employe member shall be held on the first Monday in October in each even numbered year, beginning in 1938, for a term of two years starting on the first day of January following such election. The present employe members of said board and each succeeding employe member shall hold office until their successors are elected and qualified.”

You were the second and most recently elected state employe member of the board, and your term by force of this section will end upon the election and qualification of the county employe member of such board.

Yours truly,
HERBERT S. DUFFY,
Attorney General.