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TEACHER—OHIO SERVICE TERMINATED IN 1918—NEXT EMPLOYED NOVEMBER 1, 1948—TERM ENDING JULY 31, 1949—CONTRIBUTED TO STATE TEACHERS RETIREMENT SYSTEM BEGINNING NOVEMBER 1, 1948—NINE MONTHS THROUGH JULY 31, 1949—FULFILLED ALL REQUIREMENTS OF SECTIONS 7896-1, 7896-28, 7896-29, 7896-32, G. C.—COMPLETE SCHOOL YEAR OF SERVICE CREDIT—ENTITLED TO PRIOR SERVICE CREDIT—FOR YEARS OF TEACHING SERVICE PRIOR TO SEPTEMBER 1, 1920.

SYLLABUS:

A teacher whose Ohio service terminated in 1918 and who was next employed by a board of education in Ohio, in which district the regular day schools were in session for nine months, beginning September first, to supervise in the public schools of said district for a period of nine months, beginning November 1, 1948, and ending July 31, 1949, who became a contributor to the state teachers retirement system beginning November 1, 1948, for the nine-month period ending July 31, 1949, and was in active service as a teacher during said period, has fulfilled all the requirements of Sections 7896-1, 7896-28, 7896-29 and 7896-32, General Code, for a complete school year of service credit which would entitle him to prior service credit for the years of teaching service rendered prior to September 1, 1920.

Columbus, Ohio, December 6, 1951

Retirement Board, State Teachers Retirement System
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

"The requirements to be fulfilled by a member of this System establish credit for service as a teacher in Ohio prior to September 1, 1920 are contained in Sections 7896-1, 7896-28, 7896-29, and 7896-32 of the General Code of Ohio.

"A teacher whose Ohio service terminated in 1918 was next employed by a board of education in Ohio, in which district the regular day schools were in session for nine months beginning September 1st, 'to supervise in the public schools of said district for a period of nine months, beginning November 1, 1948 and ending July 31, 1949.' Said member became a contributor beginning November 1, 1948 for the nine-month period ending July 31, 1949, when his contributions ceased.

"Will you kindly advise whether or not in your opinion said member fulfilled all the requirements of the above sections for a complete year of service credit which would entitle him to credit for approximately 18 years of service as an Ohio teacher prior to September 1, 1920?"

The state teachers retirement act went into effect in 1919, at which time a school year was defined in the school code under former Section 7689, General Code, as beginning on the first day of September of each year and closing on the thirty-first day of August of the succeeding year. No doubt, with this in mind the legislature when it enacted the state teachers retirement act provided, as set forth in Section 7896-1, General Code, that "The year for the administration of this act shall begin September first and end August thirty-first next following" thus making the year under the school code and under the state teachers retirement act coincide.

Later, Section 7689, General Code, was replaced with Section 4838, General Code, which changed the school year under the school code to "begin July first and ended June thirtieth of the succeeding calendar year." No such change has been made in the retirement act; therefore, where in the act the term "school year" or "year" as defined in the act is men-

tioned, such reference is to a year beginning September first and ending August thirty-first of the succeeding year.

Your inquiry raises the question as to whether a teacher beginning employment on November 1, 1948, and ending July 31, 1949, has been in active service in the public schools for a period of "not less than one school year" so as to entitle the member to prior service credit.

Section 7896-28, General Code, has to do with defining the amount of service required for a year's service credit.

This section reads as follows:

"The retirement board shall credit a year of service to any teacher who is employed on a full-time basis in a school district for the number of months the regular day schools of such district were or shall be in session in said district within any year, as defined in this act, except that credit granted prior to the effective date of this act shall not be changed thereby to the disadvantage of the member, and shall fix and determine by appropriate rules and regulations how much credit shall be given for parts thereof, and for such other service as is defined as prior service in section 7896-1, General Code, but in computing such service, or in computing final compensation, it shall credit not more than one year for all service rendered in any school year."

I understand that "the number of months" the regular day schools were in session, where the teacher mentioned in your request was employed, was nine months, and that the teacher worked nine months, namely, from November 1, 1948, to July 31, 1949, which nine months would be within the year as defined in the retirement act. The teacher, of course, did not work the same months that the school was in session, which was from September until the following June, although he did work the same number of months that the school was in session, namely, nine months.

There is nothing in the above section to indicate that the teacher must work the same months that the school is in session, although that will be so in most cases; and if the legislature had intended the teacher to be employed the same months the school was in session it could easily have so provided.

In other words, the teacher is entitled to a year of service credit

if he is employed for the same number of months during the year, as defined in the retirement act, that the school is in session.

The question whether he has fulfilled the requirements of Section 7896-32, General Code, which are necessary in order to entitle him to prior service credit will now be taken up.

With reference to the prior service certificate, Section 7896-29, General Code, reads as follows:

"Subject to the above restrictions, and to such other rules and regulations as the retirement board shall adopt, said board shall issue to each member a certificate certifying to the aggregate length of all his prior-service as a teacher or of such other service as defined in this act and for which he has received no credit in any other state retirement system as defined in this act."

Prior to the year 1939 the above section stated in substance that a prior service certificate must be issued to a "present teacher", and Section 7896-32, which will be quoted later, used the same term,—present teacher,—and continues to so read. In 1939, in Section 7896-29, General Code, the word "member" was substituted for "present teacher" since all of those teaching were members, the term "present teacher" only being important when the act went into effect. Such change was not made in Section 7896-32, General Code. The teacher in question is a member, and has the *status* of a present teacher if the requirements of Section 7896-32, General Code, have been met. Of course, the issuing of the prior service certificate under Section 7896-29, General Code, evidences the prior service, but does not validate the credit therefor. This must be done under Section 7896-32, General Code.

Section 7896-32, General Code, provides as follows:

"When a present-teacher ceases to be a member his prior-service certificate shall be void and not renewable: provided a teacher as defined in this act who failed to establish membership with the status of present-teacher as defined in this act, *or a teacher who has been out of active service two years or more subsequent to September 1, 1920, and who has not withdrawn his accumulated contributions may by establishing membership and by being in active service in the public schools of Ohio thereafter for a period of not less than one school year be granted the status of present-teacher by the retirement board.*" (Emphasis added.)

Now, in the above section "school year" is not defined. Where do we look for such definition? As heretofore pointed out "school year" under the school code in force at the time the teachers retirement act was enacted, or under the state teachers retirement act, is defined as being from September first to the following August thirty-first. Section 7896-32 requires the teacher to be in "active service" for one school year. This obviously can not mean that the teacher must teach for an entire year, for it is common knowledge that schools are in session for only nine months or slightly longer. Nor do I see any reason to make any distinction between a school year as provided for under Section 7896-32, General Code, and a year as provided for by Section 7896-28, General Code, particularly so since the former section says "*active service*" for a school year, and a year's *service* credit under the latter section is granted for nine months full time service during the year as defined in the retirement act.

I am informed that it has been the policy of the state teachers retirement board to deny a full year of service credit for service beginning subsequent to the opening of school in September of any year and continuing to the end of the school session in June. With this I have no quarrel. I am informed that no case has been presented to the retirement board for decision where the teacher began working after the beginning of school in September and continued to work for nine months extending after school closed in June, so that there is no administrative precedent to be considered. I am of the opinion that the phrase "in active service * * * for a period of not less than one school year" as found in Section 7896-32, General Code, means the same period of time as set forth in Section 7896-28, General Code, namely, "the same number of months," that a school is in session between September first and the succeeding August thirty-first.

Therefore, in specific answer to your question, I am of the opinion that a teacher whose Ohio service terminated in 1918 and who was next employed by a board of education in Ohio, in which district the regular day schools were in session for nine months, beginning September first, to supervise in the public schools of said district for a period of nine months, beginning November 1, 1948, and ending July 31, 1949, and who became a contributor to the state teachers retirement system beginning November 1, 1948, for the nine-month period ending July 31, 1949, and was in active service as a teacher during said period, has fulfilled all the

requirements of Sections 7896-1, 7896-28, 7896-29 and 7896-32, General Code, for a complete school year of service credit which would entitle him to prior service credit for the years of teaching service rendered prior to September 1, 1920.

Respectfully,

C. WILLIAM O'NEILL

Attorney General