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RETIREMENT BOARD OF PUBLIC EMPLOYES RETIREMENT SYSTEM—VESTED WITH DUTY TO DETERMINE WHETHER ANY PERSON IS A PUBLIC EMPLOYEE WITHIN MEANING OF PUBLIC EMPLOYES RETIREMENT ACT—DETERMINATION FINAL—SECTION 486-32 ET SEQ., G. C.

SYLLABUS:

By virtue of Section 486-32, General Code, the Retirement Board of the Public Employees Retirement System is vested with the duty of determining whether any person is a public employe within the meaning of the Public Employees Retirement Act (Section 486-32 et seq., General Code) and its determination is final.

Columbus, Ohio, December 16, 1949

Hon. Frank J. Collopy, Administrator
Bureau of Unemployment Compensation
Columbus, Ohio

Dear Sir:

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

“Section 1346-2, General Code, creates an Advisory Council of seven members appointed by the Governor with the advice and consent of the senate. It is provided in that section that ‘Each member of the advisory council shall serve *without salary*, but shall receive twenty (\$20.00) dollars per day while attending meetings of the council, or while engaged in the necessary business of the council,’ etc. (Emphasis added) The council ordinarily meets once a month to perform the duties enjoined upon it by said section.

Section 486-33 General Code creates a public employees retirement system. Membership in the retirement system is compulsory and such membership consists of all public employees, upon being regularly appointed. Exceptions from compulsory membership are then provided for in the balance of the section.

We will appreciate your advise as to whether or not members of the Advisory Council are ‘public employees’ within the meaning of Section 486-33, in view of the fact that Section 1346-2, provides that the members of the council shall serve without salary. Is the per diem allowance subject to deductions for retirement purposes?”

Section 486-32, General Code, defines various words and phrases used in the public employes retirement act (Section 486-32 et seq. General Code), among which is a definition of the meaning of the term “public employe.” Your attention is called to the last paragraph of sub-section 4 of said section, which reads as follows:

“In all cases of doubt the retirement board shall determine whether any person is a public employe as defined in this paragraph, and its decision shall be final.”

The legislature having vested in the Public Employes Retirement Board the final determination of whether any person is or is not a public employe, it is not within the province of this office to usurp the functions of that body.

You are advised, therefore, that your inquiry may be answered by proper application to the Public Employes Retirement Board.

Respectfully,

HERBERT S. DUFFY,
Attorney General.