

7002

1. STATE TEACHERS RETIREMENT SYSTEM—MEMBER—
RETIRED AFTER AUGUST 31, 1955—INTEREST ON CON-
TRIBUTION—SECTION 3307.01 (K) (1), R. C.
2. SCHOOL EMPLOYEES RETIREMENT SYSTEM—MEMBER
—RETIRED AFTER JUNE 30, 1955—INTEREST ON CON-
TRIBUTION—SECTION 3309.01 (J) (1), R. C.

SYLLABUS:

1. Where a member of the state teachers retirement system is retired after August 31, 1955, under the provisions of Section 3307.01 (K) (1), Revised Code, interest credited on his contributions, made on or prior to August 31, 1955, shall be computed up to and including such date at the rate of four per cent per annum, compounded annually, and interest shall be computed thereafter, both as to such contributions and as to contributions made thereafter, at the rate of three per cent per annum, compounded annually.

2. Where a member of the school employees retirement system is retired after June 30, 1955, under the provisions of Section 3309.01 (J) (1), Revised Code, interest credited on his contributions made on or prior to June 30, 1955, shall be computed up to and including such date, at the rate of four per cent per annum, compounded annually, and interest shall be computed thereafter, both as to such contributions and as to contributions made thereafter, at the rate of three per cent per annum, compounded annually.

Columbus, Ohio, August 13, 1956

Hon. L. D. Shuter, Executive Secretary
State Teachers Retirement System, Columbus, Ohio
Hon. Ward Ashman, Executive Secretary
School Employees Retirement System, Columbus, Ohio

Dear Sirs:

Your request for my opinion reads as follows:

“In behalf of this System and of the School Employees Retirement System, you are respectfully requested to give your opinion in reply to the question submitted below.

“Sections 3307.01 (K) (1) and 3309.01 (J) (1) of the Revised Code provide for the crediting of interest on the accumulated contributions of members at retirement as follows:

‘Section 3307.01 (K) (1) The rate of interest credited on a member’s accumulated contributions at retirement shall

be four per cent per annum, compounded annually, to and including August 31, 1955, and thereafter shall be three per cent per annum, compounded annually.'

'Section 3309.01 (J) (1) The rate of interest credited on employee contributions at retirement shall be four per cent per annum, compounded annually, to and including June 30, 1955, and, thereafter, shall be three per cent per annum, compounded annually.'

"Question :

On what contributions, if any, shall interest be credited at the rate of four per cent per annum, compounded annually, to the accounts of members retiring subsequent to the dates described in Sections 3307.01 (K) (1) and 3309.01 (J) (1) of the Revised Code?"

Sections 3307.01 (K) (1) and 3309.01 (J) (1), Revised Code, as quoted in your letter, were enacted by the 101st General Assembly, in the form of Amended House Bill No. 744, effective June 29, 1955. In addition to the two provisions which are quoted in your letter, Section 145.01 (I) (1), Revised Code, part of the definition section of the *public employees* retirement system law, contains language nearly identical to that found in the laws governing the other two retirement systems. The only variation in the three provisions is the date recited therein. Those dates correspond to the last day of the fiscal or administrative "year" of the retirement systems. In the section governing the teachers retirement system the date is August 31, 1955. In the section governing the school employees retirement system the date is June 30, 1955, while in the public employees section, the date is December 31, 1955.

The rate of interest which is credited under this section is *fixed by statute*, unlike the "regular interest" rates for the other respective funds and accounts, which rates are, under the retirement laws, determined from time to time by the retirement boards.

Assuming that a teacher retired or retires on some date after August 31, 1955, it is asked whether interest is to be credited on *any* of the contributions made by the teacher at the rate of four per cent, or whether, having retired *after* that date, the retirement system is to credit only three per cent interest, compounded annually, upon all contributions paid into the system by the teacher. In other words, is the new rate of three per cent to be applied uniformly to *all* contributions, no matter when made, or is

the new rate to be applied only with respect to contributions made after August 31, 1955?

Section 3307.01 (K) (1), Revised Code, reads:

“The rate of interest credited on a member’s accumulated contributions at retirement shall be four per cent per annum, compounded annually, to and including August 31, 1955, and thereafter shall be three per cent per annum, compounded annually.”
(Emphasis added.)

The question is reduced to a determination as to whether the words “to and including August 31, 1955” derive their significance by virtue of the date the member retires, or whether they are related to the date of the receipt of the member’s accumulated contributions.

Prior to the enactment of Amended House Bill No. 744, the guaranteed rate of interest on contributions was four per cent per annum, compounded annually, for members going on retirement. With the enactment of that bill, the provisions which are the subject of your inquiry became law.

Because of the manner in which the legislature phrased the statutes, and for other reasons which I shall discuss shortly, it is my conclusion that the legislature intended to retain the four per cent rate of interest on contributions *made* up to and including the dates set forth in the school employees, state teachers and public employees acts, which are June 30, 1955, August 31, 1955 and December 31, 1955, respectively, regardless of the fact that the member retires in one of the systems after the date specified in the statute applicable to him.

Members of the retirement systems who were eligible to retire *before* June 29, 1955, the effective date of Amended House Bill No. 744, would have had interest credited to their contributions at the rate of four per cent per annum, compounded annually, had they actually retired at that time.

It appears from the language employed by the legislature in defining “regular interest” at retirement, that that body wished to *retain* the four per cent interest rate on contributions made before the *end* of the administrative or fiscal year. Thus, for example, the four per cent interest which is compounded annually is computed on the member’s “accumulated contributions to and including August 31, 1955” in the case of a teacher. The words “at retirement” in the statute are significant only by reason of

the fact that the rates of interest provided therein are conditioned upon the member leaving his contributions in the employees' savings fund until retirement. Should his employment terminate *prior* to his becoming eligible for retirement, and should he withdraw his contributions, he would be credited with only one or one and one-half per cent interest on his contributions.

In construing the provisions in question, I believe it is important to observe what the legislature did *not* say in choosing its phraseology. It would seem that had the legislature intended to reduce the rate of interest credited on *all* contributions, whenever made, to three per cent for those members retiring after the then current administrative year, it would have used words such as "upon retirement after August 31, 1955 the rate of interest shall be three per cent per annum." This was *not* done, and such an omission assumes added significance by reason of the fact that in other sections of the three retirements acts, the legislature has seen fit to predicate certain rights upon the filing of an application for retirement on or after a certain calendar date.

Thus, in Amended House Bill No. 744 itself, in at least nine separate instances, the General Assembly made reference to a person retiring on or after a given date. Sections 145.33, 3307.38 and 3309.36, Revised Code, all refer to the superannuation allowance of a member retiring "on and after June 30, 1955." Sections 145.33 (D), 3307.38 (D), and 3309.36 (D), Revised Code, limit the "basic annual pension" portion of the total retirement allowance to members retiring "prior to October 1, 1956." Likewise, Sections 145.34, 3307.40 and 3309.38, Revised Code, make reference to a member's retiring on a *commuted* superannuation allowance "on or after June 30, 1955."

In Section 145.45, 3307.49 and 3309.45, Revised Code, the legislature, some years ago, limited the payment of survivor benefits to the beneficiaries of members who die "subsequent to June 14, 1951 and before retirement."

The legislature, having used varying expressions within the same comprehensive amendment of the retirement laws, Amended House Bill No. 744, must be deemed to have intended varying meanings to attach to those expressions. See 37 Ohio Jurisprudence, Statutes, Section 307, page 570.

The statutes involved speak of the rate of interest "at retirement." At that time the member's right to the interest actually accrues. Yet, I

am informed that the state teachers retirement system nevertheless maintains "running" records showing at any given time the extent of a member's contributions *together with* the interest guaranteed at retirement.

Upon retirement, a member of the system is granted a retirement allowance, which, among other things, includes an annuity having a reserve equal to the amount of the member's accumulated contributions at that time. That annuity, therefore, consists of all sums deducted from the member's salary, over the years, and paid into the system, and the interest thereon which is guaranteed at retirement, which hitherto has been four per cent, compounded annually.

With the change in the law, the computation of the annuity changes also. Such a change in interest rates, however, would have no practical effect upon the retirement allowance of a member who is eligible for the new "minimum benefit" of sixty-three dollars multiplied by number of years of total service credit. For members who do not have *three* or more years of total service credit within the ten years immediately prior to retirement, the retirement allowance would consist of the annuity, matching pension, and possibly a prior service pension and basic annual pension.

The interpretation I have made of the statutes is also supported by the fact that House Bill No. 744 in an earlier form purported to reduce the interest rate from four per cent to three per cent only for those persons becoming members on and after July 1, 1956, in the case of public and school employees. In the *teachers* retirement law the rate to be reduced from four per cent to three per cent for those persons becoming members on and after September 1, 1956. The fact that the legislature deleted those provisions and substituted the language now found in the case is a strong indication that that body did not intend to base its lowering of the interest rate upon the establishment or termination of membership on or after a given date.

There is one other consideration which commands attention in arriving at the legislative intention relative to these interest rate provisions. In tracing the legislative history of the rate of interest credited on a member's contributions when *withdrawn* prior to retirement, I find that the three retirement systems, for some period of years, paid four per cent interest on contributions withdrawn prior to retirement. That rate was fixed by statute and, in the teachers retirement law, it prevailed from 1920 to 1941, while in the school employees retirement law, it prevailed from 1937 to 1941.

If the recent amendments, relative to interest at *retirement*, were to be interpreted as fixing the rate of interest at three per cent on all contributions, no matter when made, then the retirement systems would be paying the member one per cent less interest on his contributions than he might have had credited had he withdrawn the contributions years ago. I do not believe such was the legislative intent. Rather, it was the intention of the legislature that the retirement system credit interest on contributions at the rate of four per cent, compounded annually, through the end of the 1955 administrative year, and the interest rate to be credited thereafter is to be three per cent per annum, compounded annually, on the member's aggregate contributions.

Thus, for example, if the member had paid \$10,000 in contributions to and including the last day of the 1955 administrative year, and after that date paid in \$500 more before retiring, say, in 1956, the retirement system should credit the \$10,000 with interest to and including the end of the 1955 administrative year at the rate of four per cent per annum, compounded annually, and credit the final contribution figure of \$10,500 at three per cent per annum, compounded annually, from the date August 31, 1955, or June 30, 1955, as the case may be.

Accordingly, it is my opinion that:

1. Where a member of the state teachers retirement system is retired after August 31, 1955, under the provisions of Section 3307.01 (K) (1), Revised Code, interest credited on his contributions, made on or prior to August 31, 1955, shall be computed up to and including such date at the rate of four per cent per annum, compounded annually, and interest shall be computed thereafter, both as to such contributions and as to contributions made thereafter, at the rate of three per cent per annum, compounded annually.

2. Where a member of the school employees retirement system is retired after June 30, 1955, under the provisions of Section 3309.01 (J) (1), Revised Code, interest credited on his contributions, made on or prior to June 30, 1955, shall be computed up to and including such date, at the rate of four per cent per annum, compounded annually, and interest shall be computed thereafter, both as to such contributions and as to contributions made thereafter, at the rate of three per cent per annum, compounded annually.

Respectfully,

C. WILLIAM O'NEILL
Attorney General