

481

POLICE FORCE MEMBER, MUNICIPAL—APPOINTED AFTER ESTABLISHMENT OF LOCAL POLICE RELIEF AND PENSION FUND—INSUFFICIENT NUMBER OF MEMBERS ON FORCE—BECAME MEMBER OF PUBLIC EMPLOYES RETIREMENT SYSTEM—WHEN MUNICIPAL POLICE FORCE MEMBERSHIP INCREASED AND POLICEMAN BECAME MEMBER OF LOCAL POLICE RELIEF AND PENSION FUND HE WAS ENTITLED TO REFUND OF CONTRIBUTIONS FROM PUBLIC EMPLOYES RETIREMENT SYSTEM.

SYLLABUS:

A member of a municipal police force appointed after the establishment of a local police relief and pension fund, who by reason of an insufficient number of members on such police force became a member of the public employes retirement system, is entitled to receive a refund from the public employes retirement system of contributions to said system when he becomes a member of the local police relief and pension fund as a result of said municipal police force being increased so as to render the previously established police relief and pension fund operative.

Columbus, Ohio, May 9, 1949

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

Dear Sir:

This will acknowledge receipt of your letter which reads as follows:

“Since the enactment of House Bill No. 195 by the 97th General Assembly, several opinions were rendered by your immediate predecessor concerning the interpretation of that legislation. At least one of these opinions, namely, No. 2327, related to the question of a refund of contributions made to the Public Employes Retirement System by a police officer prior to the establishment of the local Police Relief and Pension Fund. In that particular opinion it was held in part that police officers cease to be members of the Public Employes Retirement System when they come within the provisions of the Police Relief and Pension Fund.

“There were certain municipalities within the state who did not establish the local Police Relief and Pension Fund until after the effective date of House Bill No. 195, namely September 25, 1947, and in those cases it was held that the members of those police forces who had previously become members of the Public Employes Retirement System were not eligible for membership in the local plan and for that reason we were without authority to refund their contributions. However, a question has now developed in a certain municipality involving new members of the police force appointed after the local Police Relief and Pension Fund was established. In other words, until the required number of new appointees were appointed to the police force one new appointee was required to contribute to the Public Employes Retirement System. More recently two new police officers have been appointed by this municipality which establishes the local Police Relief and Pension Fund on an operative basis. The municipality has discontinued the contribution to our fund for the one police officer who was appointed subsequent to the time that the local Police Relief and Pension Fund was established but prior to the time that sufficient new appointees were added to make the system operative.

“Our question involves the eligibility for a refund from our System on the part of the one former contributing police officer.”

The law applicable to this question in regard to police officers is synonymous with that in regard to firemen. Therefore, the references hereinafter made to firemen will apply equally to police officers.

Your attention is directed to paragraph 3 of the syllabus of Opinion 2327, Opinions of the Attorney General for 1947, referred to in your request, which paragraph reads as follows:

“A member of the public employes retirement system who is by reason of a change in the law brought within the provisions of a firemen’s relief and pension fund, is entitled to have a refund from the public employes retirement system of his accumulated contributions to such system.”

I concur with the above quoted paragraph, and inasmuch as I do not perceive a difference between the situation of a contributor who has been affected by a change in the law and one who has been affected by an existing law becoming operative, this paragraph will apply in the instant case.

Paragraph 2 of the syllabus of Opinion No. 935, Opinions of the Attorney General for 1939, supports Opinion No. 2327, Opinions of the Attorney General for 1947, and reads as follows :

“When a member of the public employes retirement system becomes eligible to participate in the benefits of a firemen’s relief and pension fund established pursuant to the mandatory provisions of Section 4600 and related sections of the General Code, it is the duty of the retirement board to refund the accumulated contributions of such member, which should be refunded when he comes within the provisions of the municipal firemen’s relief and pension system.”

Therefore, I am of the opinion that the one former contributing police officer is eligible for a refund from the Public Employes Retirement System.

Respectfully,

HERBERT S. DUFFY,
Attorney General.