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1. RETIREMENT SYSTEM, PUBLIC EMPLOYEES—FORMER MEMBER TRANSFERRED SUBSEQUENT TO JANUARY 1, 1942 TO UNITED STATES EMPLOYMENT SERVICE—LEFT PUBLIC SERVICE OCTOBER 21, 1946—PRIOR TO RETURN OF EMPLOYMENT SERVICE TO STATE CONTROL— UNDER SECTION 486-65b G. C. NO RIGHT TO PAY TO RETIREMENT SYSTEM AMOUNT HE WOULD HAVE PAID HAD HE REMAINED IN STATE SERVICE DURING PERIOD OF FEDERAL EMPLOYMENT.

2. STATUS PRESENT MEMBER OF PUBLIC EMPLOYEES RETIREMENT SYSTEM WHO BECAME MEMBER UPON RETURN OF EMPLOYMENT SERVICE TO STATE CONTROL, NOVEMBER 16, 1946—SECTION 486-65b G. C.

3. EMPLOYEE OF STATE EMPLOYMENT SERVICE—BECAME MEMBER OF PUBLIC EMPLOYEES RETIREMENT SYSTEM BEFORE DECEMBER 31, 1940—TRANSFERRED TO UNITED STATES EMPLOYMENT SERVICE—RETURNED TO STATE EMPLOYMENT BEFORE EMPLOYMENT SERVICE WAS RETURNED TO STATE—HAS RIGHT TO PAY INTO FUND AMOUNT HE WOULD HAVE PAID HAD HE REMAINED IN FEDERAL SERVICE DURING ENTIRE PERIOD OF FEDERAL CONTROL.

SYLLABUS:

1. A former member of the public employes retirement system who was transferred subsequent to January 1, 1942 to the United States Employment Service, but who left public service on October 21, 1946, which was prior to the return of said employment service to state control, does not have the right under Section 486-65b, General Code, to pay to the retirement system the amount he would have paid had he remained in the state service during the period of his federal employment.

2. A present member of the public employes retirement system who became a member of such system upon return of the Employment Service to state control on November 16, 1946, does not have the right to make the payment provided by Section 486-65b, General Code, which he would have paid into the retirement fund had he been in state service prior to the time he was in the federal service.

3. An employe of the State Employment Service who became a member of the public employes retirement system before December 31, 1940, and was transferred to the United States Employment Service, but returned to employment by the state before the employment service was returned to the state, has the right under Section 486-65b to pay in to the retirement fund the amount that he would have paid had he remained in federal service during the entire period of federal control.

Columbus, Ohio, July 19, 1947

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

Dear Sir:

I have before me your request for my opinion, reading as follows:

“May we have your opinion upon the following questions, which relate to Section 486-65b, General Code.

Does a former member of the Public Employes Retirement System who was transferred to the United States Employment Service as of January 1, 1942, but who left public service on October 21, 1946, before the Employment Service was returned to the State have the right to pay into the Retirement System the amount he would have paid had he remained in State service during the period of his Federal service?

Does a present member of the Retirement System who became a member of the System upon return of the Employment Service to the State on November 16, 1946 have the right to make the payment covering the amount that he would have paid into the Retirement Fund had he been in State service prior to the period of time that he was in the Federal service?

Does an employe of the State Employment Service who became a member of the Retirement System before December 31,

1941 but who returned to State service before the Employment Service was returned to the State on November 16, 1946 have the right to pay into the Fund the amount that he would have paid had he remained in service during the period of Federal service?"

Effective August 25, 1943 Sections 1345-13a and 1345-13b, General Code, were enacted, providing in effect that all employes of the Ohio bureau of unemployment compensation who were or should be transferred to the United States employment service of Ohio subsequent to January 1, 1942, should be deemed on leave of absence from the state service, and upon return of such employment service to the State of Ohio, such employes should be restored to their former civil service status.

Section 486-65a, General Code, which forms a part of the law governing the public employes retirement system and which has been in force in its present form since June 25, 1945, provides in part, as follows:

"A member who separates from his service as a public employe for any reason other than death or retirement may leave his accumulated contributions, if any, on deposit with the retirement board and, for the purposes of the retirement system, be considered on a leave of absence for a period of five years. At the end of said five year period, if such member has not returned to active service as a public employe, and such member has ten years or more of service, the retirement board may, upon application, grant said member an indefinite leave of absence; if such member has less than ten years of service, the retirement board may, upon application, grant such additional leave as the retirement board may deem proper, providing that such additional leave shall not exceed a period of five years. * * * Members on such leaves of absence shall retain all rights and privileges of membership in the retirement system. Members who separated from the state service subsequent to October 20, 1933, and prior to January 1, 1935, shall be considered upon such leave."

The 96th General Assembly enacted Section 486-65b, which, so far as pertinent reads as follows:

"Members of the public employes retirement system on leave of absence as provided in Section 486-65a of the General Code, who are covered in Sections 1345-13a and 1345-13b of the General Code, or who are employes of the United States Employment Service at the time of the return of these functions to the state, or who reach retirement age prior to this date, or who return to the state service prior to the return of the employment service,

may be permitted to pay into the retirement fund the amount, with interest, they would have paid through deductions, had they continued as contributing members during the period on leave of absence, and be reinstated as active members with all prior service rights."

An examination of this last quoted section shows in the first place that its scope is limited strictly to "*members * * * on leave of absence as provided in Section 486-65a*". Furthermore, the sole effect of the provision above quoted is that members on leave of absence under conditions described, may pay in to the retirement fund the amount, with interest, which they would have paid if the transfer had not been made, and be "reinstated as active members with all prior service rights". In other words, the section applies to no one except those who had been members of the retirement system prior to the transfer of the employment service to federal control, and the sole effect of the payment is to *reinstate* them as active members of the system.

A further analysis of the provisions of this section shows that the members of the retirement system who were by this transfer on leave and who may be benefited by this section are of four classes, which are separated in each instance by the word "or":

- (a) Those who are covered by Sections 1345-13a and 1345-13b (having been transferred by executive order); or
- (b) Who were employes of the United States Employment Service at the time of the return of such service to the State (November 16, 1946); or
- (c) Who reach retirement age "prior to this date"; or
- (d) Who return to state service prior to November 16, 1946.

Your first question relates to a former member of the public employes retirement system who was transferred to the United States Employment Service as of January 1, 1942 but who left the public service on October 21, 1946, which was before the employment service was returned to the state.

Reference to the provisions of Section 1345-13a and Section 1345-13b, General Code, will, I believe throw direct light on the question here raised. Those sections, as I have stated, were intended to preserve the civil service

status of employes who were transferred, without their own volition, to the federal service. But the benefit of their provisions was only to those who stayed with the service and returned with it to state control. Section 1345-13b provides in part:

“Any person so transferred from the state service who shall have subsequent to January 1, 1942, voluntarily terminated his services with the United States employment service in Ohio or with the federal agency or agencies charged with the operation of such employment service in Ohio or with any other related service to which he may have been transferred, shall be deemed to have resigned from such service and shall not be eligible for restoration to his former state position;”

Accordingly, since Section 486-65b supra, was plainly intended to confer a special privilege on those persons who were the subject of that involuntary transfer, it follows that one who quit the public service entirely, before the return of this particular service to state control, cannot claim its benefits. Furthermore, as already suggested, the whole purpose of Section 486-65b appears to be the reinstatement to active service of those who by the terms of the law have been put in the status of being on leave of absence, and the purpose of the payment is only for the purpose of securing such reinstatement.

In the light of the foregoing, my answer to your first question must be in the negative. This member, however, is not deprived of any other rights which he may have acquired or may hereafter acquire. His leave of absence, once begun, would under the provisions of Section 486-65a supra, continue for a period of five years, and might be extended under the conditions set forth in that section; and if within that period of leave or any extension that might be granted he should again enter any branch of public service which is within the scope of the retirement system, he would thereby again become an active and contributing member, and would enjoy all the rights incident to membership.

As to your second question, I understand that a person who was not an employe of the state and not a member of the retirement system when the employment service was transferred to United States control, but who entered employment while it was under the control of the United States, on the return of that system, continued in the service, and thereby became a member of the public employes retirement system. Plainly, he could

not take advantage of the provisions of Section 486-65b, for the reason that he was not within the purview of the act, which is limited to "*members* of the public employes retirement system *on leave of absence*". It might be claimed that he fell within class (b), to which I have referred, in that he was an employe of the United States Employment Service at the time of the return of these functions to the state. That provision, if it is to be construed as consistent with the first sentence of the section, and with its entire spirit and purpose, must be limited to those who *were members* of the retirement system at the time of the transfer to federal control but who did not for some reason permit themselves to be transferred. Presumably, having failed to go at that time they later entered the employ of the federal service and returned to state control upon its return, but if they came into the service for the first time while the employment service was under federal control, they could not by any process of reasoning fall within the designation of *members* of the system who were *on leave of absence* at the time of the original transfer, nor could they be *reinstated* to something which they never had.

Furthermore, if they had held no position with the state prior to the transfer, they would have no civil service status in Ohio to be preserved by Sections 1345-13a and 1345-13b, *supra*. Accordingly, my answer to your second question must be in the negative.

As to the third proposition, it appears that the person in question was an employe of the State employment service and a member of the retirement system before the employment service was transferred to federal control, but that he returned to the service of the state before the service itself was returned. Certainly, he falls within the class which I have designated as (c), "those who returned to the state service prior to the return of the employment service", and in my opinion he is entitled to the benefits of the said Section 486-65b, and may make the payments therein provided.

Respectfully,

HUGH S. JENKINS,
Attorney General.