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FIREMEN'S AND POLICE RELIEF AND PENSION FUND—
“MEMBER” OF SUCH FUND UNDER §741.01 AND 741.31 RC
DOES NOT INCLUDE A WIDOW, CHILD OR DEPENDENT
PARENT OF A DECEASED MEMBER—SUCH PERSONS MAY
RECEIVE PENSIONS FROM EITHER FUND.

SYLLABUS:

A widow, child or dependent parent of a deceased member of a firemen's relief and pension fund or a police relief and pension fund who by virtue of such relationship is receiving a pension from either of said funds, is not a “member” of such fund as defined in Sections 741.01 and 741.31 of the Revised Code.

Columbus, Ohio, June 7, 1957

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

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

“Re: Firemen’s Relief and Pension Fund Section 741.01, Revised Code
Policemen’s Relief and Pension Fund Section 741.31, Revised Code.

“Paragraph ‘B’ of the above mentioned sections of the Code describes a ‘member of the fund’ as follows:

‘Any person who is contributing four per cent of his annual salary to the firemen’s (police) relief and pension fund established pursuant to Section 741.02, Revised Code (741.32 R. C.), or who is receiving a pension or disability benefits from such fund as a result of service in the fire department (police department)’.

“Paragraph 3 of Section 741.54, Revised Code reads as follows:

‘No distribution shall be made under this section to any police or firemen’s relief and pension fund in any calendar year if the assets of said fund as of the thirty-first day of December of the next preceding calendar year are in excess of an amount equal to the assets of said fund as of December 31, 1947, plus an amount equal to one thousand dollars multiplied by the number of members of said fund * * *.’

“Our question is: ‘Shall widows, children, or parents of firemen (police) who are receiving benefits be considered as members of the fund in addition to the firemen (police) who are contributing four per cent of their annual salary to the fund and those who are receiving pensions or disability benefits?’”

You have correctly quoted the language of Section 741.01, Revised Code, defining “member of the firemen’s relief and pension fund”. Section 741.31, Revised Code, defines member of the police relief and pension fund in substantially the same language. I call particular attention to the words “as a result of *service in the fire (police) department.*”

Under the provisions of Section 741.02, Revised Code, part of the six trustees of the firemen’s fund are chosen by *vote of members of the fire department from its own members.* Under Section 741.32, a like provision is made as to certain of the trustees of the police fund.

Both funds are supported partly by deductions of four per cent of the salaries of the *members of the fire and police departments,* respectively supplemented by a tax levy of three-tenths of a mill (see Sections 741.09 and 741.40, Revised Code).

Section 741.54, Revised Code, from which you have quoted, provides for a possible additional subsidy for each or either of said funds direct from the state treasury, depending in part on the "number of members of said fund." The sole question, therefore, involved in your inquiry is whether a widow, minor child or dependent father or mother of a man who has seen service as a policeman or fireman is a member of the fund by reason of the service of such policeman or fireman.

Taking the statute, Section 741.18, Revised Code, which defines the conditions under which a fireman may receive a pension or disability benefits, we find in paragraph (A) the following provision:

"(A) A member of the fund who has completed twenty-five years of *active service* in the fire department and has attained fifty-two years of age may, at his election, retire from the fire department, and upon notifying the board in writing of such election, shall receive an annual pension, payable in twelve monthly installments, in an amount equal to two per cent of his average annual salary for the five-year period immediately preceding the date of his retirement multiplied by the number of years he was in the active service of such department, or an annual pension of twelve hundred dollars, whichever is the greater. Such annual pension shall not exceed sixty-six per cent of the member's annual salary for the five-year period immediately preceding the date of his retirement." (Emphasis added.)

A member of the fund who has served fifteen or more years as an "active member of the department" and is discharged from such department for any reason other than dishonesty, cowardice, intemperate habits, or conviction of a felony, shall under the terms of paragraph (E) of the same section, receive a lesser annual pension.

There are other provisions in this same section fixing the amount of disability allowance which a member of the fund may receive based in each case upon his "active service."

Said Section 741.18, further provides:

"(F) *A widow of a deceased member of the fund shall receive a pension of sixty dollars per month during her natural life or until she remarries, provided she was married to the deceased while he was in the active service of the department.*
* * *"
(Emphasis added.)

Paragraph (G) of the same section, gives each surviving child of a deceased member a certain pension, and paragraph (H) under certain circumstances, gives the dependent parents of a deceased member a pension.

These are in the statutes relating to the police relief and pension fund (Sec. 741.31 *et seq.*, Revised Code) provisions for pensions and disability allowances precisely like those above quoted relative to the firemen's system.

It is notable that pension allowances granted to dependents of a deceased member of the fund are granted solely by virtue of the recipient being the widow, surviving child or dependent parent of a *member of the fund* and for no other reason. The statute plainly cannot contemplate any service in the fire department rendered by any of these pensioners. Yet in a certain sense they do become entitled to a pension by reason of service that was rendered by the deceased member. But the officer himself is the only person who can receive a *service pension*, while his dependents receive their pensions in a *representative capacity*.

Returning to the definition of "member of the fund" as contained in Section 741.01, Revised Code, we find it distinctly stated that that term means "any person" who is contributing four per cent of his annual salary to the fund and "any person" who is receiving a pension from the fund. If the statute had stopped at this point, there might be some plausibility in the argument that the mere receipt of a pension from the fund constitutes one a member. But the legislature, in adding the words "as a result of service in the fire department" appears to me to have dispelled this assumption, because it is evident that the widow of a member receives her pension not by reason of any service which she has rendered but *solely by being his widow*, and even the length of his service in the fire department had nothing to do with her right to receive the pension or the amount or duration of it.

I realize that the provision of Section 741.54 *supra*, was intended to supply a possible deficiency in the fund and that such deficiency might be caused in part by the large number of widows, children or parents who are receiving pensions; but if the legislators intended to make such dependent pensioners members of the fund for the purpose of causing them to assist in invoking this supplementary subsidy from the state treasury they failed to use language evidencing that intention.

Accordingly, in explicit answer to your question, it is my opinion that a widow, child or dependent parent of a deceased member of a firemen's relief and pension fund or a police relief and pension fund, who by virtue

of such relationship is receiving a pension from either of said funds, is not a "member" of such fund as defined in Sections 741.01 and 741.31 of the Revised Code.

Respectfully,
WILLIAM SAXBE
Attorney General