

OPINION NO. 86-047**Syllabus:**

Employees at Ohio State University who perform billing and fee collection services of a clerical nature for a professional association comprised of physicians who maintain private medical practices at Ohio State University are public employees as defined in R.C. 145.01(A).

To: William S. McLaughlin, Executive Director, Public Employees Retirement System, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, June 25, 1986

You have requested my opinion whether several individuals employed at Ohio State University are public employees, as defined in R.C. 145.01(A), for purposes of membership in the Public Employees Retirement System (PERS). According to information provided me by both the University and the Auditor of State, the five individuals in question are employed at the University, and currently perform billing and fee collection services of a clerical nature for a professional association comprised of physicians who serve as faculty members at the University's College of Medicine. This particular professional association was organized pursuant to R.C. Chapter 1785, the professional associations law, for the purpose of engaging in the practice of medicine and providing general medical services to persons in need thereof. The physicians who are members and shareholders of this professional association maintain private medical practices on University property, utilizing University facilities and services in conjunction therewith, from which they derive practice income, in addition to the salaries they receive as faculty members of the College of Medicine. See generally 1986 Op. Att'y Gen. No. 86-046. The individuals about whom you have inquired devote a large portion of their time performing billing and fee collection services for these physicians and their professional association. It is also my understanding that the physicians reimburse the University in full for the compensation it provides these five individuals.¹

PERS is established and governed by the provisions of R.C. Chapter 145. R.C. 145.03 states in part: "A public employees retirement system is hereby created for the employees of the state and of the several local authorities mentioned in [R.C. 145.01]. Membership in the system is compulsory upon being employed...." R.C. 145.03 also provides for the exemption of certain students, part-time employees, and temporary or emergency employees from membership in PERS.

¹ I note that R.C. 145.01(A) specifically empowers the Public Employees Retirement Board to "determine whether any person is a public employee," and further states that such a "decision is final." See generally 1985 Op. Att'y Gen. No. 85-012; 1975 Op. Att'y Gen. No. 75-075; 1955 Op. Att'y Gen. No. 5308, p. 280. Thus, a decision in any particular case rests properly with the Board. See 1980 Op. Att'y Gen. No. 80-098 at 2-397. Accordingly, the views expressed in this opinion are not intended to preclude the Board from reaching its own decision whether the persons in question are public employees as defined in R.C. 145.01(A). This opinion is intended only to assist the Board in making its final determination.

R.C. 145.01 defines persons who are considered to be public employees, and entities that are considered to be employers, for purposes of PERS. R.C. 145.01 states in pertinent part as follows:

As used in Chapter 145. of the Revised Code:

(A) "Public employee" means any person holding an office, not elective, under the state or any...state university...or employed and paid in whole or in part by the state or any of the authorities named in this division in any capacity not covered by section 3307.01 [State Teachers Retirement System] or 3309.01 [School Employees Retirement System] of the Revised Code. "Public employee" also means one who is a member of the retirement system who continues to perform the same or similar duties under the direction of a contractor who has contracted to take over what before the date of such contract was a publicly operated function. The governmental unit with whom such contract has been made shall be deemed the employer for the purposes of administering Chapter 145. of the Revised Code.... "Public employee" means also any person who performs or has performed services under the direction of an employer, as defined in division (D) of this section, notwithstanding his compensation for such services has been or is paid by one other than such employer. Credit for such service shall be included as total service credit, provided, the employee makes the payments required by Chapter 145. of the Revised Code, and his employer makes the payments required by sections 145.48 and 145.51 of the Revised Code.

In all cases of doubt, the public employees retirement board shall determine whether any person is a public employee, and its decision is final.

(D) "Employer" means the state or any...state university...not covered by section 3307.01 or 3309.01 of the Revised Code. In addition, "employer" means the employer of employees described in division (A) of this section. (Emphasis added).

Several exceptions to the general definition of public employee and the membership requirement of R.C. 145.03 appear in various statutes and administrative rules. See, e.g., R.C. 124.85 (persons receiving disability benefits or service retirement pensions or allowances from other Ohio public retirement systems); R.C. 124.86 (CETA employees); R.C. 145.012 (inmates of correctional institutions, patients in hospitals for the mentally ill, and residents in institutions for the mentally retarded); R.C. 145.02 (persons included in other Ohio public retirement systems); R.C. 145.031-.033 (certain employees of Hamilton County bodies); 1 Ohio Admin. Code 145-5-01 (employees of humane societies); 1 Ohio Admin. Code 145-5-02 (foster grandparents). In addition, R.C. 145.01(A) excludes from its definition of public employee any person employed in any capacity covered by the State Teachers Retirement System (STRS), R.C. Chapter 3307, or the School Employees Retirement System (SERS), R.C. Chapter 3309.

R.C. 3307.01 provides for the membership of trustees and faculty members of public schools, including colleges and universities, in STRS. For the purpose of this opinion I shall

assume that the individuals in question are not employed in any capacity covered by R.C. 3307.01, and thus are not eligible for membership in STRS. It is also my understanding that nonteaching employees at Ohio State University, including the five individuals about whom you have inquired, are not eligible for membership in SERS since the board of trustees of Ohio State University has not agreed by formal resolution to accept all the requirements and obligations imposed by R.C. Chapter 3309. See R.C. 3309.01(B); R.C. 3309.23(C). Thus, I direct my attention to whether the individuals in question are public employees as defined in R.C. 145.01(A) because they either are employed and paid in whole or in part by Ohio State University, or perform services under the direction of Ohio State University, notwithstanding their compensation for such services is paid by one other than Ohio State University.

From my review of the plain language of R.C. 145.01(A), it appears that the individuals in question are public employees because they are employed and paid in whole or in part by Ohio State University. The definitions contained in R.C. 145.01(A) are quite broad, and have been interpreted as such. See State ex rel. Hoda v. Brown, 157 Ohio St. 368, 105 N.E.2d 643 (1956); 1985 Op. Att'y Gen. No. 85-012; 1976 Op. Att'y Gen. No. 76-040; 1975 Op. Att'y Gen. No. 75-075. See also 1952 Op. Att'y Gen. No. 1124, p. 77 (syllabus, paragraph one)(the law establishing the public employees retirement system, being a pension law, should be liberally construed, in the light of its evident purpose, in favor of the public employees who are its intended beneficiaries). Webster's New World Dictionary 1044 (2d college ed. 1978) defines "pay," in part, as "to give to (a person) what is due, as for goods received, services rendered, etc; remunerate; recompense," and further notes that "pay" "is the simple, direct word meaning to give money, etc. due for services rendered, goods received, etc." See generally State ex rel. Lorain Democrat Company v. City of Lorain, 12 Ohio N.P. (n.s.) 636, 638 (C.P. Lorain County 1912)(in its general legal sense the word "paid" signifies satisfaction in money or other thing of value of an obligation due from one to another, but in its employment in contracts and in legislative enactments it may have a wider latitude of meaning according to the connection in which it is used). It is my understanding that these particular employees receive their compensation directly from Ohio State University, by way of checks drawn upon accounts of the University. Thus, construing the language of R.C. 145.01(A) broadly, the compensation of the individuals in question is paid by Ohio State University, notwithstanding that the University may thereafter be reimbursed the amount of such compensation by the physicians for whom they perform billing and fee collection services. See generally 1980 Op. Att'y Gen. No. 80-087 (general health district employees are employed and paid by the general health district, notwithstanding the district receives a partial subsidy from the state for such expenses); 1965 Op. Att'y Gen. No. 65-079 (employees of a state university who are paid out of a state university rotary fund are public employees within the meaning of R.C. Chapter 145).

Accordingly, it is my opinion, and you are advised that employees at Ohio State University who perform billing and fee collection services of a clerical nature for a professional association comprised of physicians who maintain private medical practices at Ohio State University are public employees as defined in R.C. 145.01(A).