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1. RETIREMENT SYSTEM, PUBLIC EMPLOYEES—MEMBER WHO FILED APPLICATION FOR RETIREMENT ON OR AFTER APRIL 1, 1947 BUT PRIOR TO JUNE 5, 1947—TERMINATED SERVICE BEFORE JUNE 5, 1947—SUBJECT TO CONDITIONS AND ENTITLED TO BENEFITS OF SECTION 486-47 G. C. AS IT STOOD BEFORE AMENDMENT.
2. MEMBER WHO FILED APPLICATION FOR RETIREMENT ON OR AFTER APRIL 1, 1947 BUT PRIOR TO JUNE 5, 1947 AND CONTINUED IN SERVICE, SUBJECT TO CONDITIONS AND ENTITLED TO BENEFITS OF SECTION 486-47 G. C. AS IT STOOD BEFORE AMENDMENT—SECOND BRANCH OF SYLLABUS, OAG 2400, OCTOBER 10, 1950, MODIFIED.
3. SECTION 486-57 G. C., AMENDED JUNE 5, 1947—CONDITION THAT MEMBER MAY REGAIN RIGHTS TO PRIOR SERVICE PENSION AFTER THREE YEARS OF FULL TIME CONTRIBUTING MEMBERSHIP IS COMPLIED WITH IF MEMBER HAS HAD CONTRIBUTING SERVICE BEFORE OR AFTER JUNE 5, 1947—THRD BRANCH OF SYLLABUS, OAG 2400, OCTOBER 10, 1950 OVERRULED.

## SYLLABUS:

1. A member of the public employes retirement system who filed his application for retirement on or after April 1, 1947, but before June 5, 1947, the effective date of the amendment of Section 486-47, General Code, and also terminated his service before June 5, 1947, is subject to the conditions and entitled to the benefits of said Section 486-47, as it stood before amendment.

2. A member of the public employes retirement system who filed his application for retirement on or after April 1, 1947, but before June 5, 1947, the effective date of the amendment of Section 486-47, General Code, but continued in service until after June 5, 1947, is subject to the conditions and entitled to the benefits of said Section 486-47 as it stood after amendment. Second branch of syllabus of Opinion No. 2400, rendered October 10, 1950, modified.

3. The condition in Section 486-57, General Code, as amended June 5, 1947, that a member of the public employes retirement system may regain his rights to a prior service pension only after completion of three years of full time contributing membership after restoration of membership, is complied with if he has had such period of contributing service either before or after June 5, 1947. Third branch of the syllabus of Opinion No. 2400, rendered October 10, 1950, overruled.

Columbus, Ohio, July 11, 1951

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:

"The Retirement Board has instructed me to request your opinion of the following situations:

"1. The first question concerns a determination of 'pending action.' The question is raised because of a change in certain retirement qualifications on June 5, 1947 (Am. Sub. S. B. 57). Prior to the date June 5, 1947, only one year of contributing service was required to qualify for prior service credit. Legislation which became effective on that date changed the requirement from one to three years and added a basic pension of \$15 per month for all members retiring with ten or more years of total service credit. The end of the quarter after the legislation became effective was June 30, 1947. The Retirement Board has held that if service was terminated on or subsequent to June 5, 1947 the amended law applied, i.e., that the members must have at least three years of contributing membership to receive prior service credit, and that he would be eligible for the additional benefit of the basic pension of \$15 per month added by the June 5 legislation. Conversely, the Board has held that if services were terminated before June 5, 1947, and the member had filed

his application for retirement before that date, then the law prior to the amendment applied, i.e., the member was not entitled to the basic pension of \$15 per month and needed but one year of contributing membership to qualify for prior service credit.

"2. Section 486-57 of the General Code provides, among other things, that 'no member shall be entitled to such restored prior service credit until after he has completed at least three years of full-time contributing membership or the equivalent thereof, since restoration of membership.' The question upon which we wish your opinion involves the date membership is restored for the purpose of computing the required three years of 'contributing membership.' In other words, is membership restored for this purpose on the date the public employe returns to public service and to contributing membership in the system, or is the calculation of the required three years to begin on the date the redeposit of refund with interest is made?"

"In light of these conditions, will you kindly indicate whether the Board has the authority to base determination of pending action on the conditions specified above?"

I understand the first question involves the status of about forty-seven members of the Public Employes Retirement System who were retired in June, 1947, and that these fall into two classes, by reason of the fact that fifteen not only had filed their applications before June 5, 1947, but also had terminated their public service before that date, whereas the remainder had filed their applications before June 5, 1947, but continued in service until after that date.

The date of June 5, 1947, becomes important in that it was the effective date of the amendment of several sections of the law relating to the System.

Section 486-47, General Code, was the subject of amendment by the act referred to, 122 Ohio Laws, 192. Prior to its amendment, that section in so far as pertinent, read as follows:

"Any other provisions of law notwithstanding, *one year* of contributing membership in the retirement system shall entitle a member to receive prior service credit for services prior to January 1, 1935, in any capacity which comes within the provisions of the public employes retirement act, provided that such member has not lost membership at any time by the withdrawal of his accumulated contributions upon separation. \* \* \*"  
(Emphasis added.)

As amended, it read :

“Any other provisions of law notwithstanding, *three years* of contributing membership in this retirement system subsequent to the date that membership is established shall entitle a member to receive prior service credit for services prior to January 1, 1935, in any capacity which comes within the provisions of the public employes retirement act, provided that such member has not lost membership at any time by the withdrawal of his accumulated contributions. \* \* \*”

(Emphasis added.)

In Opinion No. 2400, rendered by my immediate predecessor on October 10, 1950, in response to a request from the Bureau of Inspection and Supervision of Public Offices, the question was raised as to the effect of the amendment of Section 486-47, supra, on those members of the System who had after April 1, 1947, but prior to June 5, 1947, filed application for retirement. Section 486-59, General Code, as then in force, provided in part :

“On and after January 1, 1939, any member, except a new member with less than five years of service, who has attained sixty years of age, may retire by filing with the retirement board an application for retirement. The filing of such application shall retire such member as of the end of the quarter of the calendar year then current. \* \* \*.”

In the opinion just referred to, it was held as shown by the first and second paragraphs of the syllabus :

“1. Pending actions are those applications for retirement filed with the public employes retirement board by a member of the public employes retirement system prior to the effective date of Section 486-47, General Code.

“2. Pension status of members of the public employes retirement system, who file an application to retire after March 31, 1947, and prior to July 1, 1947, is based upon the provisions of law in effect at the time the application is filed.”

The question, therefore, before my immediate predecessor, was as to the status of members who filed their applications for retirement on or after April 1, 1947 but prior to June 5, 1947, the effective date of the amendment of Section 486-47, with respect to their right to a prior service pension. It will be noted that under that section prior to its amendment, *one year* of contributing service since membership was established, was

required as a condition to the receipt of the prior service pension, whereas, under the amendment, *three years* of contributing service was required. The then Attorney General took into consideration Section 26, of the General Code, which provides generally that the amendment or repeal of a statute shall not affect pending actions, transactions or proceedings, and he expressed the opinion that the filing of an application for retirement prior to the effective date of the amendment in question, constituted a pending action and therefore, that the right of the applicant for retirement to receive a prior service pension would be governed by the statute as it existed prior to its amendment, notwithstanding the fact that the filing of the application would according to Section 486-59, *supra*, retire the member as of the current calendar quarter, which in this case would be June 30, 1947.

With that opinion I fully concur, so far as it applies to those employes who had filed their application for retirement and had actually quit the service prior to June 5, 1947. In so doing, these employes had done everything within their power prior to the effective date of that amendment, to complete their retirement and, clearly, their status was thereby fixed beyond any possibility of change. Furthermore, the allowances they would receive would under the provisions of Section 486-60, General Code, be determined largely by the amount they had contributed to the System, and by the amount their employer had contributed, and both of these elements would be determined by the exact time when their employment and their service ceased. Said Section 486-60, General Code, then read as follows :

“Upon superannuation retirement, a state employe shall be granted a retirement allowance consisting of :

“(a) An annuity having a reserve equal to the amount of the employes’ accumulated contributions at that time, and, provided such employe shall not hold any remunerative office or employment in any federal, state, county or local government,

“(b) A pension of equivalent amount, and

“(c) An additional pension, if such employe is an original member, equal to two per centum of his final average salary multiplied by the number of years of service in his prior service certificate.”

However, as to those members who filed such application and continued in service after the effective date of the amendment of Section

486-47, it is not clear that their cases became "pending cases" within the rule above referred to. Their continuation in service might indicate that their determination to retire was not absolute. Certainly it would affect the amount of the employe's and employer's contribution and the amount of the retirement allowance to a certain extent. And these additional payments would be based on salary earned after the new law had gone into effect. They would thereby appear to fall clearly within the precise provisions of the statute, as to the effective date of retirement, and their retirement in the case presented would become complete and in effect after the amendment of the statute was in effect, to wit, at the end of the current quarter. Their continuation in service up to the end of the quarter would indicate that they did not desire to be retired until that time. Under the retirement system, except as to employes who have reached the age of seventy, retirement is purely voluntary and the Retirement Board has nothing to do with the matter except to pay the retirement allowance in accordance with the law.

I hold, therefore, that as to those who did not terminate their service until after the effective date of said amendment of Section 486-47, to wit, June 5, 1947, they would lose the rights which they might have retained by an earlier termination of their service as to a prior service pension based on one year of contributing service and would become subject to the requirement of three years of contributing service as a condition precedent to the right to such prior service pension. At the same time they would gain any new benefits that were conferred by the amendment.

Accordingly, as to those who did elect to continue in service after the effective date of said Act, I find it necessary to modify the opinion aforesaid, and to hold that they became subject to the new law.

Your second question involves the consideration of an amendment to Section 486-57, General Code, which also became effective on June 5, 1947. Prior to that amendment, this section read as follows:

"Should a state employe who separates from his service as a state employe and relinquishes his membership in the retirement system through withdrawal of his accumulated contributions, return within five years, and restore to the employes' savings fund, his accumulated contributions as they were at the time of his separation, together with regular interest thereon (from) the date of withdrawal to the date of redeposit, the annuity rights forfeited by him at the time of separation shall be restored and

his obligations as a member of the retirement system shall resume.”

It will be noted that the only benefits which the member could obtain by returning to the System and making a refund of contributions which had been withdrawn, was a restoration of the *annuity* rights which he had forfeited by reason of his withdrawal, and that no provision was there made whereby he could by any process restore the rights which he may have had to the prior service pension. However, in the amendment of said Section 486-57, it was made to read as follows :

“Should a member who separates from his service as a public employe and relinquishes his membership in the retirement system through withdrawal of his accumulated contributions, *return to public service and to membership* in this retirement system within seven years of the date of withdrawal and within the same period restore to the employes’ savings fund, his accumulated contributions as they were at the time of withdrawal, together with regular interest thereon from the date of withdrawal to the date of redeposit, the *annuity rights* provided in section 486-60, 486-61, or 486-63 of the General Code, which were forfeited by him at the time of separation shall be restored. In addition to restoring his annuity rights such a member may restore *prior service credit* forfeited by such withdrawal by paying into the employers’ accumulation fund an additional amount equal to fifty per centum of the employers’ total contribution during the period of contributing membership prior to such withdrawal, together with regular interest thereon from the date of withdrawal to the date of payment. The retirement board shall have final authority to determine and fix the amount and manner of such payment.

“Provided, however, that no member shall be entitled to such restored prior service credit until after he has completed at least three years of full time contributing membership or the equivalent thereof, *Since restoration of membership. \* \* \**”

(Emphasis added.)

This section as amended, was also the subject of consideration in Opinion No. 2400, of my immediate predecessor, to which reference has been made. The third syllabus of that opinion reads as follows :

“A member of the public employes retirement system, who withdrew his accumulated contributions and restored same within the required number of years prior to June 5, 1947, and subsequent thereto makes application for retirement, is entitled to receive prior service credit only if he had been a contributing

member of the system for three years after June 5, 1947, the effective date of the amendment to Section 486-57 of the General Code.”

It will be observed that there is nothing in the language of Section 486-57 as amended, that states that the three years of full time contributing membership since restoration of membership, must be after June 5, 1947, the effective date of said amendment. Under the provisions of this section, a member had the right at any time, upon being reemployed, to restore to the employes' savings fund, within seven years from the time of withdrawal, the accumulated contributions which he had previously withdrawn, together with interest as provided in the statute, and thereby *be restored to his annuity rights*. It should be borne in mind, however, that when he reentered the public service he became immediately a *member of the system*, whether he exercised his privilege of restoring his forfeited annuity rights or not. This is so, because membership in the System under Section 486-33, General Code, is compulsory for any employe of the state or the various subdivisions included in the scope of the System. Furthermore, the right conferred by Section 486-57 to regain his annuity rights by making a refund, has been in the law ever since the original passage of the public employes' retirement act in 1933. Accordingly, the new privilege by the amendment of Section 486-57, while it is conditioned on three years of contributing service "since restoration of membership" is in no way limited to restoration of membership which took place after June 5, 1947, the effective date of the amendment. The withdrawal from public service and the withdrawal of contributions might have taken place years ago, say 1940. Let us assume that the member who had withdrawn his contributions at that time, returned to service in 1943, and redeposited his contributions and thereby became entitled to his annuity rights. Having continued in service until after June 5, 1947, he made the deposit provided therein to reestablish his prior service rights. Plainly, he complied with the requirement of this section, that he have behind him three years of contributing service. He would have this contributing service by virtue of the provision of the law, Section 486-68, which required his employer to deduct 5% of his salary and pay it into the employe's savings fund. He thereby became a contributing member, and, assuming he had been a contributing member for more than three years and filed application for retirement in 1947, he clearly was entitled to prior service pension provided by Section 486-60, which then read as follows:



“Upon superannuation retirement, a member shall be granted a retirement allowance consisting of :

“(a) An annuity having a reserve equal to the amount of the member’s accumulated contributions at that time,

“(b) So long as such member shall not hold any remunerative office or employment in any federal, state, county or local government, a pension of equivalent amount and

“(c) An additional pension, if such member can qualify for prior service, equal to two per centum of his final average salary multiplied by the number of years of such prior service credit, and

“(d) A basic annual pension equal to \$180, providing the member has ten or more years of total service credit, except that such additional basic annual pension shall not exceed the sum of the annual benefits provided by paragraphs (a), (b) and (c) of this section. The cost of such basic annual pension shall be included in the deficiency contribution provided by sections 486-68a and 486-68c, General Code.”

I cannot agree with the conclusion embodied in the third branch of the syllabus of the 1950 Opinion, No. 2400, and must therefore overrule the same.

In specific answer to your questions it is my opinion :

1. A member of the public employes retirement system who filed his application for retirement on or after April 1, 1947, but before June 5, 1947, the effective date of the amendment of Section 486-47, General Code, and also terminated his service before June 5, 1947, is subject to the conditions and entitled to the benefits of said Section 486-47 as it stood before amendment.

2. A member of the public employes retirement system who filed his application for retirement on or after April 1, 1947, but before June 5, 1947, the effective date of the amendment of Section 486-47, General Code, but continued in service until after June 5, 1947, is subject to the conditions and entitled to the benefits of said Section 486-47 as it stood after amendment. Second branch of the syllabus of Opinion No. 2400, rendered October 10, 1950, modified.

3. The condition in Section 486-57, General Code, as amended June 5, 1947, that a member of the public employes retirement system may regain his rights to a prior service pension only after completion of three

years of full time contributing membership after restoration of membership, is complied with if he has had such period of contributing service either before or after June 5, 1947. Third branch of the syllabus of Opinion No. 2400, rendered October 10, 1950, overruled.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General