

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

860.

BONDS—CITY OF AKRON, SUMMIT COUNTY, \$10,000.00.

COLUMBUS, OHIO, July 7, 1939.

Retirement Board, Public Employes' Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of the City of Akron, Summit County, Ohio,
\$10,000. (Unlimited.)

The above purchase of bonds appears to be part of a \$125,000 issue of a \$1,900,000 voted authorization of sewer bonds of the above city dated April 1, 1936. The transcript relative to this issue was approved by this office in an opinion rendered to the Industrial Commission of Ohio under date of May 31, 1939, being Opinion No. 667.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

861.

PUBLIC EMPLOYES RETIREMENT SYSTEM—EXEMPTION FROM MEMBERSHIP—SECURED ONLY BY FILING WRITTEN APPLICATION WITH RETIREMENT BOARD, WITHIN THREE MONTHS AFTER EFFECTIVE DATE OF ACT—LIMITATION STRICTLY ENFORCED—SEE SECTIONS 486-33a, 486-32 ET SEQ., G. C.—SEE OPINION 832, JUNE 29, 1939.

SYLLABUS:

Exemption from membership in the Public Employes Retirement System, as provided for in Section 486-33a of the General Code, may be secured only by filing written application for such exemption with the Retirement Board within three months after the effective date of the

act (Section 486-32, General Code, et seq.), and the board is without authority to grant exemption to any applicant, therefore, unless made within said time and in said manner.

COLUMBUS, OHIO, July 7, 1939.

HONORABLE WILSON E. HOGE, *Secretary Public Employes' Retirement System, Columbus, Ohio.*

DEAR SIR: I have your request for an opinion which reads as follows:

“Amended House Bill 776, 92nd General Assembly, becoming effective on April 18, 1938, provided that any original member of the retirement system from groups made eligible by such legislation might claim exemption from participation in the retirement system by filing written application with the Retirement Board for such exemptions within three months after the act became effective.

Immediately following the effective date of the law, the Retirement Board in conjunction with the Auditor of State called a meeting in Columbus of the fiscal officers of all counties and municipalities, at which time the provisions of the law were explained fully. In following months numerous bulletins were sent to the fiscal officers of the political subdivisions, the Retirement Board considering the fiscal officers as the agents of the Board, together with complete explanations of the system. Such officials were asked by the Retirement Board to help disseminate information to the end that each employe be given the opportunity to understand the law.

The Auditor of Highland County failed to notify the employes of that county until the period allowed for claiming exemption had expired. The employes of that county claim that since they were not notified they should be given the privilege at this time of filing exemption from participation.

The question is: Does the Retirement Board have authority under the law to permit the granting of exemptions in such cases?”

An original employe may be exempted from membership in the Public Employes Retirement System by filing a written application for such exemption with the retirement board within three months after the act became effective. The pertinent part of Section 486-33a of the General Code reads as follows:

“* * * Provided, however, that any original member may be exempted from membership by filing written application for such exemption with the retirement board within three months after this act goes into effect. * * *”

Your letter states that the employees allege that they neglected to file their application for exemption within the time required because their county auditor failed to notify them in time to do so.

There is no provision anywhere in the act which designates the county auditor as an agent of the retirement board; neither is it a duty imposed by law upon the county auditor to notify public employees of the statutory requirements of the retirement act.

Obviously it would be impossible for the members of the board to keep every employee informed as to his legal rights. The employee is presumed to have knowledge of these rights and he does have opportunity to become acquainted with them. Therefore, he is charged with notice and knowledge of the laws and orders of the department of which he is a member, and the neglect of the auditor cannot excuse failure to apply for exemption within the statutory period.

The statute (Section 486-33a, General Code) requires that written application for such exemption must be filed with the retirement board within three months after this act goes into effect. The board does not have the power to ignore this requirement or change the language thereof. Therefore, I am of the opinion that the retirement board has no authority to grant exemption in cases where application therefor has not been made within the three months period as required by the statute.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

862.

COUNTY TUBERCULOSIS HOSPITAL—ELECTORS OF COUNTY—FIFTY-FIVE PER CENTUM VOTE—LEVY TO SUPPLEMENT GENERAL FUND APPROPRIATION—AMENDED SENATE BILL 4, 93RD GENERAL ASSEMBLY—SPECIAL TAX LEVY—NO AUTHORITY TO CHANGE PERCENTAGE OF NECESSARY ELECTORS.

SYLLABUS:

1. *To carry a levy to supplement general fund appropriation for the support of a county tuberculosis hospital, not to exceed the aggregate of one mill, submitted under the provisions of Amended Senate Bill No. 4, effective May 22, 1939, fifty-five per centum of the electors voting on*