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PUBLIC EMPLOYEES RETIREMENT SYSTEM—OHIO TURNPIKE COMMISSION AN EMPLOYER—EMPLOYER'S ACCUMULATION FINAL—OBLIGATION TO PAY INTO—§145.01 R.C.

SYLLABUS:

1. The Ohio Turnpike Commission is an "employer" as defined in Section 145.01 (D), Revised Code.

2. When an employee member of the Public Employees Retirement System qualifies for credit for services between January 1, 1935 and the date he became a member of the Public Employees Retirement System, the employer by whom said employee was employed at the time said service was rendered must make the matching employer payment provided for in Section 145.51, Revised Code, regardless of whether or not said employee is employed by said employer at the time billing for such payment is made.

Columbus, Ohio, January 29, 1960

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

Dear Sir:

I have your request for my opinion reading as follows:

"In an action for declaratory judgment initiated by the Ohio Turnpike Commission, the Franklin County Common Pleas Court held, on December 22, 1955, in Case No. 192013, that the Ohio Turnpike Commission was to be deemed a member of the Public Employees Retirement System, effective as of June 29, 1955.

"Subsequent to the Court decision, the Turnpike Commission passed a resolution dated October 1, 1957 known as Resolution No. 28-1957 (Photocopy of which is attached) in which the Turnpike Commission, in effect, petitioned the Public Employees Retirement Board 'to have coverage under the System for periods of service with the Commission prior to June 29, 1955' made possible to its employees. Further, 'that the comptroller be authorized to honor billings rendered to the Commission pursuant to Revised Code of Ohio, Sec. 145.47, by the Public Employees Retirement System required to match contributions of the Commission's employees seeking credit for such prior service.' The Public Employees Retirement Board, in regular monthly meeting on October 17, 1957, by unanimous vote took action to approve the Turnpike Commission's resolution.

"After the action on October 17, 1957 by the Retirement Board some ten (10) employees of the Turnpike Commission requested statements and made payment (as authorized by action of the Commission, the Retirement Board and Section 145.29, fifth sentence, of the Revised Code of Ohio) to secure credit for service rendered the Turnpike Commission prior to June 29, 1955. Subsequent to the payment by these ten employees of the Turnpike Commission the Retirement Board added an amount (equal to the total of such employees' payments) to the next employer billing of the Turnpike Commission as presently provided in the second paragraph of Section 145.51 of the Revised Code of Ohio. (NOTE—this provision has been contained in Chapter 145. of the Revised Code since October 1953, however, originally it was included in Section 145.48; then on September 16, 1957 it was deleted from this section and inserted in Section 145.47. Still later, as of August 1, 1959 the provision was deleted from Section 145.47 and inserted in Section 145.51 of the Revised Code.) Such additional amounts were paid by the Turnpike Commission without question.

"Then, on May 29, 1959, a former employee of the Turnpike Commission (a Mr. Y) made such a payment in the amount of \$706.45 covering certified employment by the Turnpike Commission from April 19, 1954 to June 30, 1955. An equal amount was added to the next employer billing of the Turnpike Commission. That portion of said billing has not been paid. We understand payment will not be made until and unless you hold, by formal opinion, that the Turnpike Commission is required to make such payment.

"At its regular monthly meeting on December 17, 1959 the Public Employees Retirement Board instructed me to request your opinion whether the Ohio Turnpike Commission is required to make such payments representing an amount equal to the payments made by former employees of the Ohio Turnpike Commission covering employment by the Ohio Turnpike Commission prior to June 29, 1955."

From the facts as stated in your request, it appears that the Turnpike Commission does not question their obligation to make the matching employer payment for previous service employees who are employed by said commission at the time said payments are made. The objection seems to be limited to their obligation to make such matching employer payments for employees who are no longer employed by the Turnpike Commission when the payment is requested.

Your attention is called to Section 145.01 (A) which defines "Public Employee" for the purposes of Chapter 145., Revised Code, the pertinent part of which reads as follows:

“* * * ‘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 sections 145.29 and 145.47 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.” (Emphasis added)

From the information in your request, it seems clear that the Public Employees Retirement Board has determined the employees of the Turnpike Commission who served said commission prior to June 29, 1955, to be public employees within the meaning of Section 145.01 (A) Revised Code. Under the express provisions of this section, the decision of the retirement board is final. The employees are therefore entitled to the benefits which accrue under Chapter 145., Revised Code, because of that status.

One of these benefits set forth in Section 145.29, Revised Code, is as follows:

“* * * Credit for service between January 1, 1935, and the date he became a member except a part-time employee who claimed exemption under the provisions of section 145.03 of the Revised Code, may be secured by any ‘public employee’ as defined in division (A) of section 145.01 of the Revised Code for service rendered an ‘employer’ as defined in division (D) of section 145.01 of the Revised Code provided such public employee pays into the employees’ savings fund an amount equal to the amount he would have paid if he had been continuously a member of the public employees retirement system since January 1, 1935, or since his date of employment, plus interest at the rate of three per cent per annum, compounded annually subject to such rules and regulations relative to the amount and manner of payment as may be adopted by the board. * * *”

The member mentioned in your request, as all members of Public Employees Retirement System, is entitled to receive service credit under the terms of this section subject to the provisions of Section 145.01, Revised Code, as set forth above; to wit, payment by the employee of the amount determined by the Public Employees Retirement Board and a matching payment by “his employer.”

Since the Ohio Turnpike Commission has been determined to be a member of the Public Employees Retirement System, such commission must be an "employer" as described in division (D) of Section 145.01, Revised Code, and therefore must make all of the payments of an "employer" under the provisions of Section 145.51, Revised Code.

The pertinent part of Section 145.51, Revised Code, reads as follows:

"Each employer described in division (D) of section 145.01 of the Revised Code, shall pay into the employers' accumulation fund, in such monthly or less frequent installments as the public employees retirement board requires an amount certified by the board which shall equal the per cent of the total compensation, earnable by all contributors during the preceding year, which is the sum of the normal contribution rate plus the deficiency contribution rate.

"In addition there shall be added to the employer billing next succeeding an amount equal to any additional payments made to the public employees retirement system by employee members of the respective employer which payment represents the amount, with interest, paid by such members to receive contributing service credit for service prior to the date of initial contribution to the system.

"* * *"

The second paragraph of Section 145.51, Revised Code, as quoted above does not, standing alone, require an employer to pay the billing for matching employee payment. However, it is a well settled rule of statutory construction that a statute should be considered as a whole. (See 37 Ohio Jurisprudence, page 606, Statutes Section 334) It is equally well settled that statutes in *pari materia* should be construed together as if they were a single statute. (37 Ohio Jurisprudence, page 594, Statutes Section 331) Section 145.51, Revised Code, and Section 145.01 (A), Revised Code, are in *pari materia*. Upon consideration of the requirements in the first paragraph of Section 145.51, Revised Code, and in Section 145.01 (A), Revised Code, I can only conclude that an "employer" must make a matching payment billed in accordance with the second paragraph of Section 145.51, Revised Code.

With reference to the member referred to in your request, the facts clearly indicate that the Ohio Turnpike Commission was "his employer" at the time the service in question was rendered. The Commission therefore must make the matching payment for this man's service in accordance

with the provisions of Section 145.51, Revised Code. In accordance with the above, I am of the opinion and you are advised:

1. The Ohio Turnpike Commission is an "employer" as defined in Section 145.01 (D), Revised Code.

2. When an employee member of the Public Employees Retirement System qualifies for credit for service between January 1, 1935 and the date he became a member of the Public Employees Retirement System, the employer by whom said employee was employed at the time said service was rendered must make the matching employer payment provided for in Section 145.51, Revised Code, regardless of whether or not said employee is employed by said employer at the time billing for such payment is made.

Respectfully,

MARK McELROY

Attorney General