

2422.

PUBLIC EMPLOYEES RETIREMENT SYSTEM—EMPLOYEE  
MAHONING VALLEY SANITARY DISTRICT NOT ELIGI-  
BLE FOR MEMBERSHIP—SEPARATE AND DISTINCT  
POLITICAL SUBDIVISION.

*SYLLABUS:*

*An employe of the Mahoning Valley Sanitary District is not eligible for membership in the Public Employes Retirement System.*

COLUMBUS, OHIO, May 9, 1938.

*Public Employes Retirement Board, Columbus, Ohio.*

GENTLEMEN: This will acknowledge receipt of your recent communication, which reads as follows:

“The provisions of Amended House Bill No. 776, enacted by the present Special Session of the General Assembly and approved by the Governor on January 14th, 1938, include the employes of Conservancy Districts in the State of Ohio in the membership of the Public Employes Retirement System. Defining a ‘Conservancy District Employe shall mean any person holding a conservancy office, not elective, in the State of Ohio and/or paid in full or in part by the Conservancy District.’

The question arises as to whether the employes of the Mahoning Valley Sanitary District can be said to come under the provisions of this Act. The administrative setup and the purpose for the establishment of such district is almost identical with that of any other so-called Conservancy District.

The question is: Will an employe of the Mahoning Valley Sanitary District be eligible for membership in the Public Employes Retirement System?”

Section 486-33a, General Code, provides, in part, as follows:

“The state employes’ retirement system created by Section 486-33, General Code, shall hereafter be known as the public employes retirement system, and the state employes’ retirement board shall hereafter be known as the public employes retirement board.

\* \* \*

\* \* \*

Beginning July 1, 1938, in addition to the present membership of said retirement system, there shall be included therein

all county, municipal, park district, conservancy, health and public library employes as defined herein, and such county, municipal, park district, conservancy, health and public library employes, except as otherwise provided herein, shall have all the rights and privileges and be charged with all the duties and liabilities provided for in the laws relating to said retirement system as are applicable to state employes. \* \* \*

From a reading of the above quoted part of Section 486-33a, supra, it is obvious that sanitary district employes are not specifically included in the membership of the Public Employes Retirement System:

Your request infers that the language of this section does not include sanitary district employes. Your letter, however does present the question of whether or not a sanitary district employe can be included within the term "conservancy employe."

From the provisions of Section 486-33c, General Code, a "conservancy employe" is defined as follows:

"For the purposes of this act \* \* 'Conservancy employe' shall mean any person holding a conservancy office not elective in the State of Ohio and/or paid in full or in part by a conservancy district. \* \* \*"

It is clear that by virtue of this definition in order for a person to be classified as a "conservancy employe" that person must hold a conservancy office (not elective) and be paid in part or in full by a conservancy district.

Sections 6828-1, et seq., of the General Code constitute the Conservancy Act of Ohio and provide for the creation of conservancy districts.

Section 6828-2, General Code, states the purpose for which conservancy districts may be organized as follows:

- "(a) of preventing floods;
  - "(b) of regulating stream channels by changing, widening and deepening the same;
  - (c) of reclaiming or of filling wet and overflowed lands;
  - (d) of providing for irrigation where it may be needed;
  - (e) of regulating the flow of streams;
  - (f) of diverting, or in whole or in part eliminating water courses;
- and incident to such purposes and to enable the accomplishment, to straighten, widen, deepen, change, divert, or change the course

or terminus of, any natural or artificial water course; to build reservoirs, canals, levees, walls, embankments, bridges or dams; to maintain, operate and repair any of the construction herein named; and to do all other things necessary for the fulfillment of the purposes of this act."

Section 6828-6, General Code, provides that upon the order of the court being issued, decreeing the establishment of a conservancy district and a name given to such district, "thereupon the district shall be a political subdivision of the State of Ohio, a body corporate with all the powers of a corporation," etc.

Sections 6602-34, et seq., General Code, is known as the Sanitary District Act of Ohio, and provides for the creation of sanitary districts.

Section 6602-35, General Code, provides that a sanitary district may be established for the following purposes, to wit:

- "To prevent and correct the pollution of streams;
- (b) To clean and improve stream channels for sanitary purposes;
- (c) To regulate the flow of streams for sanitary purposes;
- (d) To provide for the collection and disposal of sewage and other liquid wastes produced within the district;
- (e) To provide a water supply for domestic, municipal and public use within the district, and incident to such purposes and to enable their accomplishment, to construct reservoirs, trunk sewers, intercepting sewers, siphons, pumping stations, wells, intakes, pipe lines, purification works, treatment and disposal works; to maintain, operate and repair the same, and do all other things necessary for the fulfillment of the purposes of this act."

Section 6602-39, General Code, provides that upon the establishment of a sanitary district, "the district shall be a political subdivision of the State of Ohio, a body corporate, with all the powers of a corporation," etc.

It is clear that from the provisions contained in the "Conservancy Act of Ohio" and the "Sanitary District Act of Ohio," there is a difference and distinction between the purposes for which a conservancy district and a sanitary district may be established; and that, upon establishment of one or the other of such districts, the district becomes a distinct and separate political subdivision. Therefore, by no ingenious argument can it be said that the employe of a sanitary district can be termed as an employe holding a conservancy office and paid in full or in part by

a conservancy district, when that conservancy district is an entirely distinct and separate political subdivision from the political subdivision or sanitary district which employs such sanitary district employe.

The Public Employes Retirement System Act enumerates and sets forth the various employes included in the membership of such system. It is presumed that the lawmakers included in the act all the various employes they intended. If not, the remedy is lodged in the legislature to change by amendment, or otherwise. As stated in the case of *Slingluff, et al. vs. Weaver, et al.*, 66 O. S., page 627:

“Courts cannot correct supposed errors, omissions or defects in legislation.”

To the same effect is the case of *Ohio Savings & Trust Company, vs. Schucider, et al.*, 25 Ohio Appellate, 259, wherein it was stated:

“Courts cannot read into a statute that which does not appear therein; it being presumed that lawmakers placed in the statute all that was intended.”

It is impossible to include a group of employes within the provisions of the Public Employes Retirement System Act, when the language appearing in the act is not broad enough to include such group. The well recognized principle of “*expressio unius est exclusio alterius*” has direct application herein. The inclusion of various groups of employes in clear, plain, unambiguous and well defined language, implies exclusion of all others. This rule of law is well expressed in the following case: *Steu-benville vs. Reiner*, 7 Ohio Law Abstract—

“Mention, in statute, of one class or several classes of persons, implies exclusion of all others.”

The Mahoning Valley Sanitary District is a sanitary district created and organized under and by virtue of the provisions of Sections 6602-34, et seq., General Code, to provide a water supply for domestic, municipal and public use in the cities of Youngstown and Niles, in said district. It is not necessary to say anything further than that it is a separate and distinct political subdivision known as the Mahoning Valley Sanitary District, and has no relation whatever, to any conservancy district.

Therefore, in specific answer to your question it is my opinion that an employe of the Mahoning Valley Sanitary District is not eligible for membership in the Public Employes Retirement System.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*