

1721.

STATE EMPLOYEES RETIREMENT BOARD—MUST ENFORCE COMPULSORY RETIREMENT—END OF YEAR, 1937—EMPLOYEES, SEVENTY YEARS OF AGE OR OVER—EXCEPTION—CLASSIFIED SERVICE, EXCEPTIONAL QUALIFICATIONS—APPROVAL OF APPLICATION BY HEAD OF DEPARTMENT OR INSTITUTION—CONTINUANCE IN SERVICE ONE YEAR.

SYLLABUS:

The members of the State Employees Retirement Board must retire, at the end of the year 1937, all state employes who were over seventy years of age at the time they became members and all state employes who attained the age of seventy years at the end of the year 1937, unless any such state employe is in the classified service holding a position on account of exceptional qualifications under the provisions of Section 486-14, General Code, or any such state employee has had approved by the head of his department or institution his application for continuance in service for a period of one year.

COLUMBUS, OHIO, January 6, 1938.

State Employees Retirement Board, Columbus Ohio.

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

“While Sec. 486-59 G. C. seems to be self-explanatory as to the optional and compulsory age requirements for the retirement of state employes, yet there seems to be a difference between the wording of the law and the intent of the drafters of the original law enacted by the Legislature.

The law states that any member ‘except a new member with less than five years of service who has attained sixty years of age may retire.’ The law then goes on to say that ‘the Retirement Board shall retire all members who have attained the age of seventy years at the end of the year in which such age is attained’ and does not set up any length of service required. The question is, therefore, is the Retirement Board compelled to retire any and all employes (who do not have the approval of the heads of their departments to continue for one year periods) at the end of the year in which they attain seventy years of age without regard to

the fact that they may have rendered considerably less than five years of service?

That question becomes important when it becomes known that an exceptionally large number of employes have entered the service of the State of Ohio within the last two years who were over seventy years of age at the time they entered the service. While the law provides that any new employes over fifty years of age may exempt themselves within ninety days from entering the service by applying to the Board for such exemption, a great number of them have not taken advantage of that provision, and are regular members of the Retirement System. While I think the intent of the Legislature is to improve the efficiency of the State service by eliminating superannuated employes, the fact remains that if we retire these new members with less than five years of service it practically assumes the proportions of asking them for their resignations inasmuch as pensions based on such short terms of service would be positively negligible as to the amount.

Your attention to this question at your earliest convenience would be appreciated, inasmuch as it will be necessary for this Board to inform the employes in question within the near future."

Section 486-32, paragraph (19), General Code, provides as follows:

"'Superannuation retirement age' shall mean, as applied to state employes, seventy years of age until January 1, 1939; then and thereafter, 'superannuation retirement age' shall mean sixty years of age."

Section 486-59, General Code, reads as follows:

"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 year then current.

At the end of the year in which he becomes a member the retirement board shall retire any state employe who was over seventy years of age at the time he became a member and shall retire all other members at the end of the year in which the age of seventy is attained except state employes in the classified service holding positions on account of exceptional qualifications

under the provisions of Section 486-14 of the General Code. Provided that until January 1, 1942, any member having reached the age of seventy years may, upon written application, approved by the head of his department or institution, be continued in service for a period of one year, and thereafter may be continued in service for periods of one year each, upon the filing of like application and approval."

From a reading of the provisions of the above quoted sections, it is clear:—that, the retirement age as applied to state employes, is not at seventy years of age until January 1, 1939; and that, from the language employed in Section 486-59, supra, it is compulsory for the State Employes Retirement Board to retire at the end of the year, 1937, all state employes who were over seventy years of age at the time they became members, and all members who attained the age of seventy years in the year 1937, except state employes in the classified service holding positions of exceptional qualifications as specified in Section 486-14, General Code, or those who have attained the age of seventy years but have been approved for continuance in service for a period of one year by the head of the department or institution.

There is nothing in the State Employes Retirement System Act that can be interpreted or construed as permitting the board to take into consideration the number of years that any state employe has been employed, or to exercise any discretion whatsoever in determining whether an employe should or should not be retired. If the employe has attained seventy years of age and is not in the classified service holding a position on account of exceptional qualifications under the provisions of Section 486-14, General Code, the board *must retire* that employe. If the employe has attained seventy years and is within the exception under the provisions of Section 486-14, General Code, or the head of the department or institution has approved the application of the employe for another year of service, the retirement board cannot retire such an employe. The board cannot exercise any discretion. Its authorized action is compulsory.

I do not doubt that by the retirement of some members "with less than five years of service it practically assumes the proportions of asking them for their resignations inasmuch as pensions based on such short terms of service would be positively negligible as to the amount." However, the office of the Attorney General is limited to interpreting and construing statutes according to the natural and obvious import of the language employed by the legislature. This rule was well expressed in the case of *Slingluff, et al. vs. Weaver, et al.*, 66 O. S., 621:

“But the intent of the lawmakers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the lawmaking body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

Therefore, in specific answer to your question it is my opinion that, the members of the State Employees Retirement Board must retire, at the end of the year 1937, all state employes who were over seventy years of age at the time they became members and all state employes who attained the age of seventy years at the end of the year 1937 unless any such state employe is in the classified service holding a position on account of exceptional qualifications under the provisions of Section 486-14, General Code, or any such state employe has had approval by the head of his department or institution his application for continuance in service for a period of one year.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1722.

STATE TEACHERS' RETIREMENT SYSTEM—STATE EMPLOYEES' RETIREMENT SYSTEM—DEFINITION WORD “EMPLOYE”—STATUS AS TO PENSION WHERE EMPLOYE IS PART TIME TEACHER—PART TIME EMPLOYE NOT ENTITLED TO MEMBERSHIP IN EACH SYSTEM—APPLICATION OF SECTION 486-32 G. C.

SYLLABUS:

1. *One, who until August 1, 1937, was a teacher, and contributed to the State Teachers' Retirement System, and has not withdrawn his accumulated deductions, or retired on a pension, or rendered less than two years' service as a teacher in any four year period, is not entitled to membership in the State Employees' Retirement System upon being employed by the state on August 1, 1937, in a capacity other than a teacher.*