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RETIREMENT SYSTEMS — EMPLOYEE, MEMBER OF PUBLIC EMPLOYEES RETIREMENT SYSTEM, EMPLOYED BY CITY ALSO COUNTY — ENTITLED TO BE MEMBER OF MUNICIPAL RETIREMENT SYSTEM — NOT ENTITLED TO CREDIT FOR SERVICES PERFORMED FOR MUNICIPALITY AND COMPENSATION RECEIVED THEREFOR, TO DETERMINE PRIOR SERVICE IN ORDER TO FIX AMOUNT TO BE PAID BY STATE PUBLIC EMPLOYEES RETIREMENT SYSTEM, UPON RETIREMENT OF SUCH EMPLOYEE.

SYLLABUS:

A public employe employed both by the city of Cincinnati and Hamilton county, who is a member or is eligible to become a member of the retirement system of the city of Cincinnati, is not entitled to have any prior service rendered the city of Cincinnati considered by the public employes' retirement board in fixing the amount to be paid to such employe from the public employes' retirement fund upon such employe's retirement.

Columbus, Ohio, November 22, 1940.

Mr. Wilson E. Hoge, Secretary, Public Employes Retirement System, Columbus, Ohio.

Dear Sir:

Your recent request for my opinion duly received. Your letter reads as follows:

“Mr. B began employment with the city of Cincinnati in 1902 and continued to work until the present time for that city at a salary of \$85.00 per month. Beginning in 1929 and until the present time, Mr. E also received a salary of \$50.00 per month from the county of Hamilton. Mr. B is now expecting to retire at the end of the year * * * and is eligible to receive a pension from the City of Cincinnati Retirement System on all of his municipal service since 1902, based upon the salary of \$85.00 per month. The Public Employes System can give him credit for his county service since 1929 at the salary of \$50.00 per month. Thus he would receive the benefit of the increased salary from \$85.00 to \$135.00 per month on his service from 1929 until the present time.

Mr. B however, claims that since under the Public Employes Retirement Law the average prior-service salary for the entire pe-

riod of service is based on the years from 1930 to 1935, during which time he was receiving a total salary of \$135.00 per month and since the city of Cincinnati is giving him credit for the years since 1902 at the rate of \$85.00 per month, the Public Employees Retirement System ought to give him credit for the years from 1902 to 1929 for the difference in salary to which he would be entitled if he were a member of this retirement system and not of the system of the city of Cincinnati.

The question therefore, is: Since the city of Cincinnati is giving Mr. B credit for all of his service as an employe of the city of Cincinnati at the entire salary rate paid to him by that city, could the Public Employees Retirement System give him any credit other than his county service since 1929 at the rate of \$50.00 per month received from the county?"

A resolution of your question requires a consideration of Section 486-33b and 486-33c, General Code, the latter of which was amended by the 93rd General Assembly (118 v. S. 54, Eff. 6-30-39). This amendment, however, in nowise changed the first sentence of that part of Section 486-33c hereinafter quoted or the law controlling the facts set forth in your inquiry.

Section 486-33b, General Code, reads as follows:

"The service of all such county, municipal, park district, conservancy, health and public library employes, including their service as county, municipal, park district, conservancy, health, public library and/or state employes, prior to January 1, 1935, shall be included as prior service, provided such persons are present county, municipal, park district, conservancy, health or public library employes. Credit for service between January 1, 1935, and June 30, 1938, may be secured by any such county, municipal, park district, conservancy, health or public library employe, provided he or she shall pay into the employes' savings fund an amount equal to the full additional liability assumed by such fund on account of the crediting of such years of service. The retirement board shall have final authority to determine and fix the amount and manner of payment that any such county, municipal, park district, conservancy, health or public library employe shall pay on account of such service between January 1, 1935, and June 30, 1938, who desire to claim credit therefor. Such payment together with the regular interest as defined by section 486-32, General Code, shall be refunded in the event of the death or withdrawal from service of the member prior to retirement under the same conditions and in the same manner as refunds are made under sections 486-65 and 486-66, General Code, from the employes' savings fund."

Section 486-33c, General Code, provides *inter alia* that:

" * * * But said term shall not include those persons who come within the provisions of any other retirement system estab-

lished under the provisions of the laws of this state or of any charter, nor shall the provisions of this act in any manner apply to a police relief fund or a firemen's pension fund established under provisions of law. No employe except an employe who comes within the provisions of a police relief fund or a firemen's pension fund shall be excluded from membership in the retirement system because of membership in any other retirement system established under the provisions of the laws of this state or of any charter unless such employe is contributing to such other retirement system on the basis of two thousand dollars per annum or is receiving a disability allowance from such other retirement system. * * * "

With the exception of the meaning of the phrase "said term" as used in the first of the two sentences above quoted from Section 486-33c, it seems to me that the above provisions are, in so far as your question is concerned, free from ambiguity and need no interpretation or construction. And in determining the meaning of the words "said term", that is, as to whether they have reference *only* to the phrase "Public library employe", or to each and all of the kinds of public employes defined in the section, it is my opinion that the latter is true. I reach this conclusion: First, because the entire Public Employes Retirement Law must be read as a whole and so as to effect a consistent legislative purpose; and as a corollary to this proposition any construction other than the one herein adopted would lead to an absurd result; second, because the Public Employes' Retirement Law is remedial in its character and should be liberally construed except where a liberal construction would do violence to the *express* language of the statute; third, because of the context and express language of Section 486-33c, General Code, above quoted in part; fourth, because of the legislative history of Section 486-33c; and, lastly, because of that fundamental rule of statutory interpretation and construction to the effect that where the plain and evident sense and meaning of the words derived from the context justify and require, words in the singular may be taken as including the plural, and vice versa.

As to the first two reasons above given, both the principles of law applicable and the application thereof to your question seem to be so obvious that I forbear the citation of authorities or any discussion of their application.

Considering the context of Section 486-33c, *supra*, it seems patent that the words "said term" (which means, as I construe the section, the term "county employe", the term "municipal employe", the term "park district employe" or any other kind of public employe enumerated in said section), was intended to cover any one of such kinds of employes coming "*within the provisions* of any other retirement system", that is, eligible to become a mem-

ber of any such system, established under state law "or of any charter", or to persons entitled to participate in a "police relief fund or a firemen's pension fund established under provisions of law." It is true the the next sentence expressly and positively excludes employes coming "within the provisions of a police relief fund or a firemen's pension fund" from membership in the Public Employes Retirement System and further provides that no employe (other than policemen and firemen so excepted) shall be excluded from the Public Employes' Retirement System because of membership in any other retirement system under state law or a municipal charter, unless such employe is contributing to such other retirement system "on the basis of two thousand dollars per annum" or is receiving disability allowance from such other system. But certainly, both of the above quoted sentences from Section 486-33c must be given effect if possible.

If the first sentence is to be literally followed, a municipal employe eligible to be a member of a municipal retirement system could in no event be a member of the Public Employes' Retirement System even though he were a state employe, or a public employe other than a municipal employe of the kind provided for in Section 486-33c, and notwithstanding the fact that the compensation received from the municipality were infinitesimal compared to the compensation received from the state or other political subdivision. Likewise, if the second sentence from the section under consideration is to be given a literal meaning to the exclusion of the provisions of the first of the above quoted sentences, then the Legislature has used many words in the first of such sentences that are entirely meaningless. It is, of course, fundamental that different sections of the General Code in *pari materia*, as well as different parts of the same section, must be given effect if possible, and it is never to be presumed that the law-enacting body has included sentences or phrases or words in a statute without some object in view. The two sentences must therefore be reconciled and effect given to the provisions of each. And the patently reasonable construction is that the Legislature intended that a municipal employe was to receive the benefits of the retirement system established under the municipal charter, including benefits for prior service, if he were eligible to be a member of a municipal retirement system, to the extent of the compensation received from and the prior service rendered to the municipality, and at the same time be eligible to be a member of the Public Employes' Retirement System, if he were at the same time a state employe, or a public employe other than a municipal employe, and receive from the Public Employes' Retirement System such benefits as are provided by the state law,

having due regard to the compensation received from the state or public employment other than municipal employment and the prior service rendered to the state or to the other political subdivision other than to the municipality of whose retirement system he is a member, or eligible to be a member.

It is noted in your request that Mr. B is only asking for the difference between what he would get as a member of the Public Employes Retirement System, giving credit for the time he served the city of Cincinnati at the compensation at which he was employed by the city, and the amount he will actually receive from the city and from the Public Employes' Retirement System, with due consideration to the prior service rendered to and compensation received from Hamilton County. It seems to me quite manifest that Mr. B is not entitled to receive any such difference from the Public Employes Retirement System. Certainly if the converse of the facts in Mr. B's case were present and if, upon his retirement, he be entitled to receive a greater amount under the retirement system of the city of Cincinnati, no one would contend that the Public Employes Retirement Board would be entitled to deduct from the amount due from the Public Employes Retirement Fund any difference in Mr. B's favor under the Cincinnati Retirement System over the amount legally allowable under state law.

Coming now to the legislative history of Section 486-33c, General Code, examination discloses that Section 486-33c was enacted on December 22, 1937 (117 v. 743), amended on February 28, 1938 (117 v. 840), and again amended on March 28, 1939 (118 v. S. 54). In the section as originally passed and in each of the amendments thereto, the phraseology or the words "said term" have remained unchanged, this section as first enacted, providing that county, municipal, conservancy district, and public library employes were public employes within the retirement law, the first amendment providing that park district employes should also be included, and the last amendment providing that, for the purposes of the retirement law, a sanitary district should "be considered a conservancy district". And it was in this second amendment that the second sentence above quoted was enacted.

I am informed by you that the words "said term" have been consistently construed by the Public Employes' Retirement Board to cover each and all of the kinds of public employes defined in Section 486-33c and that no assessment of any kind has been made against the city of Cincinnati or Mr. B in the particular case under consideration in so far as any compensation received by him from the city is concerned.

Lastly, I invite your attention to that well settled principle of statutory interpretation and construction that "words in a statute importing the plural number may be made applicable to single persons or things, and vice versa." See Black on Interpretation of Laws, p. 232. Indeed, it is expressly provided in Section 27, General Code, that:

"In the interpretation of parts first and second, unless the context shows that another sense was intended, * * * ; words * * * in the plural include the singular and in the singular include the plural number; * * * ."

See also in this connection 37 O. Jur. 564.

In view of the foregoing, it is my opinion that the language of Section 486-33c, to the effect that the definition of public employes (other than those included within the provisions of the police relief or firemen's pension fund) contained in Section 486-33c "shall not include those persons who come within the provisions of any other retirement system" established under state law or any charter, must be interpreted and construed as meaning that, upon his retirement, no municipal employe who is eligible for membership in a municipal retirement system is entitled to receive credit based upon his prior service for and compensation received from the municipality to whose retirement system he is eligible for membership.

For the reasons above given, and in specific answer to your question, it is my opinion that a public employe employed both by the city of Cincinnati and Hamilton County, who is a member or is eligible to become a member of the retirement system of the city of Cincinnati, is not entitled to have any prior service rendered the city of Cincinnati considered by the Public Employes' Retirement Board in fixing the amount to be paid to such employe from the Public Employes' Retirement Fund upon such employe's retirement.

Respectfully,

THOMAS J. HERBERT,
Attorney General.