

2479.

PUBLIC EMPLOYES RETIREMENT SYSTEM — WATERWORKS EMPLOYEE—SEVENTY YEARS OF AGE—UPON WRITTEN APPLICATION, APPROVED BY “HEAD OF DEPARTMENT,” DIRECTOR OF PUBLIC SERVICE, MAY BE CONTINUED IN SERVICE ONE YEAR AND THEREAFTER FOR PERIODS OF ONE YEAR EACH, UPON LIKE PROCEDURE—MANSFIELD, CITY OF.

SYLLABUS:

Under the provisions of Section 486-59, General Code, until January 1, 1942, an employe of the waterworks of the city of Mansfield, having reached the age of seventy years, may, upon written application approved by the Director of Public Service of the City of Mansfield, 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.

Columbus, Ohio, June 28, 1940.

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

Dear Sir:

This will acknowledge receipt of your request for my opinion on the following:

“You are respectfully requested to render your opinion on the following question, due to certain elements having been questioned by certain officials of the City of Mansfield, Ohio.

Section 486-59 of the General Code of Ohio provides that employes having attained the age of seventy years must retire at the end of the year in which such age is attained unless:

‘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, * * *.’

The question being raised concerns the interpretation as to who is meant under the law by the 'head of the department.' At the end of the year 1939, several employes of the waterworks owned and operated by the City of Mansfield submitted applications to continue in the service during the year 1940, such applications having been approved by the service director of said city. It was our contention that the service director was the appointing authority and that the Waterworks Department came directly under his jurisdiction, as well as certain other divisions concerned with the city service. The applications were therefore approved and the men have continued in the service.

Contention is made, however, that under the law the superintendent of the waterworks should have signed such applications to continue and that it was illegal to have approved the signature of the service director.

The question is, therefore; Under the law should the superintendent of the waterworks or the service director have signed the applications to continue past the compulsory retirement age and, if the service director's signature were accepted, does it make such applications null and void?"

Section 486-59, General Code, to which you refer in your inquiry, reads in part as follows:

“ * * *

* * *

* * *

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.”

It will be noted that this section requires any member of the Public Employes Retirement System who has reached the age of seventy years and who desires to continue in service to make written application therefor, within the time prescribed, approved by the head of the department or institution in which he is employed.

In view of this requirement you inquire as to who is the "head" of the

waterworks of the City of Mansfield as that term is used in Section 486-59, supra.

The following definition of "head" may be found in Webster's New International Dictionary:

* * *

* * *

* * *

4. One who stands in relation to others somewhat as a head does to the other members of the body; a director; ruler; leader; chief; * * *.

5. The place of leadership, of honor, or of command; the most important or foremost position; * * *."

With this definition in mind, let us examine the statutes relating to the office of director of public service of a municipal corporation. In addition to his general powers (Sections 4323, et seq., General Code), such director of a municipal corporation possesses certain specific powers and duties with respect to municipal waterworks. Such powers and duties are contained in part in Sections 3956 and 3957, General Code, which provide as follows:

Section 3956, General Code:

"The director of public service shall manage, conduct and control the water works, furnish supplies of water, collect water rents, and appoint necessary officers and agents."

Section 3957, General Code:

"Such director may make such by-laws and regulations as he deems necessary for the safe, economical and efficient management and protection of the water works. Such by laws and regulations shall have the same validity as ordinances when not repugnant thereto or to the constitution or laws of the state."

By force of these sections, the director of public service is given complete control of the municipal waterworks, including the power to appoint necessary employes. Of necessity the director must appoint some person who will be in constant attendance to manage and operate the waterworks. In the instant case, I presume such appointee has been given the title of superintendent. One so appointed is only the agent of the director and at all times subject to the director's control. In the absence of the director, the superintendent directs the lesser employes of the waterworks, but in the final analysis all such employes are answerable to the director himself.

In view of the unambiguous language of the sections above quoted, I am impelled to the conclusion that the director of public service is the head of the municipal waterworks. As such head, therefore, under the provisions of Section 486-59, supra, he is the proper party to approve applications of employes desiring to remain in service for periods of one year each after attaining the age of seventy years.

Specifically answering your question, it is my opinion that under the provisions of Section 486-59, General Code, until January 1, 1942, an employe of the waterworks of the City of Mansfield, having reached the age of seventy years, may, upon written application approved by the Director of Public Service of the City of Mansfield, 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.

Respectfully,

THOMAS J. HERBERT,
Attorney General.