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RETIREMENT FUND, PUBLIC EMPLOYES — PAYMENTS MADE
— CURRENT APPROPRIATION, STATE HIGHWAY PATROL —
RETIRED MEMBER.

SYLLABUS:

Payments to public employes retirement fund from current appropriation made to State Highway Patrol therefor, discussed.

Columbus, Ohio, December 3, 1942.

Hon. H. D. Defenbacher, Director of Finance,
Columbus, Ohio.

Dear Sir:

I have your letter requesting my opinion, reading as follows:

“House Bill No. 665, making appropriations for the

biennium ending Dec. 31, 1942, passed May 16, 1941, and becoming effective June 3, 1941, contained appropriations to the Public Employees Retirement System. Among the various items we find the following:

	1941	1942
'From the undistributed revenues as provided by Section 6291, General Code —		
State Highway Patrol.....	6,090.00	7,458.00'

House Bill No. 523, establishing a Highway Patrol Retirement System and creating a pension fund, was passed May 13, 1941, and became effective Sept. 4, 1941. Section 23 of the act provides in part as follows: 'The State of Ohio shall pay into the State Highway Patrol pension fund an equal amount of each contributor.' However, since no appropriation was made to the Highway Patrol pension fund by the Legislature, no amounts can be or have been paid into this fund. Through the first three quarters of 1941 this department authorized payment from the appropriation made in H. B. No. 665 from the Highway Patrol funds to the Public Employees Retirement Fund. Since October 1, 1941, however, we have withheld approval of such payments.

We have been informed that a certain portion of the Highway Patrol personnel have remained in the Public Employees Retirement System but many in the system when House Bill No. 665 was enacted are no longer eligible for benefits from the System and our office has taken the position that the Public Employees Retirement Fund is therefore not entitled to the full amount appropriated in House Bill No. 665.

Will you kindly advise us informally whether all the amount appropriated should be paid to the Public Employees Retirement Fund or only such proportionate amount in accordance with the number of employees now participating as compared to the number participating when the appropriation was made?"

The answer to your question turns largely upon the construction of Section 486-68a, General Code, being a part of the Public Employees Retirement Act. That section, as amended by the 94th General Assembly (119 Ohio Laws, 29), reads as follows:

"Beginning January 1, 1939, each county, municipality, park district, conservancy district, health district and public library as employers, *and beginning January 1, 1943*, the state of Ohio, as employer, shall pay to the employer's accumulation fund a certain per centum of the compensation of each employe member, to be known as the 'normal contribution' and a further per centum of the earnable compensation of each such member

to be known as the 'deficiency contribution.' The rates per centum of such contribution shall be fixed on the basis of the liabilities of the retirement system and shall be certified to the director of finance, and to the heads of the various departments, by the retirement board after each actuarial valuation. Beginning January 1, 1938, and until January 1, 1939, each county, municipality, park district, conservancy district, health district and public library shall pay to the retirement board into such funds as the board may designate, an amount not exceeding one and twenty-five hundredths per centum of the earnable salary or compensation of each employe member, as may be certified by the retirement board. In computing the contributions of each county, municipality, park district, conservancy district, health district and public library, as herein provided, the amount of a contributor's earnable salary or compensation in excess of two thousand dollars per annum shall not be considered. Beginning January 1, 1938, and until January 1, 1943, the state shall pay to the retirement board into such funds as the board may designate, the amount necessary to pay the state's share of the retirement allowance of such state employes who may be retired during that period, and any unexpended balance in such appropriation existing on December 31, 1942, shall lapse into the fund from which such moneys are appropriated."

Prior to its enactment in its present form, which became effective July 1, 1941, this section, as found in 118 O.L. 471, was identical with the present form except as to the dates in the opening and closing sentences, which I quote:

"Beginning January 1, 1939, each county, municipality, park district, conservancy district, health district and public library as employers, and *beginning January 1, 1941*, the state of Ohio, as employer, shall pay to the employer's accumulation fund a certain per centum of the compensation of each employe member, to be known as the 'normal contribution' and a further per centum of the earnable compensation of each such member to be known as the 'deficiency contribution.' * * * Beginning January 1, 1938, and *until January 1, 1941*, the state shall pay to the retirement board into such fund as the board may designate, the amount necessary to pay the state's share of the retirement allowance of such state employes who may be retired during that period, and any unexpended balance in such appropriation existing on December 31, 1940, shall lapse into the fund from which such moneys are appropriated."

(Emphasis mine.)

Both of the above enactments contain a significant departure from the language of the section as it was originally enacted, and as it appeared in 117 Ohio Laws, page 69. It then read:

"Beginning January 1, 1939, the state of Ohio, as em-

ployer, shall pay to the employer's accumulation fund a certain per centum of the compensation of each employe member to be known as the 'normal contribution' and a further per centum of the earnable compensation of each such member to be known as the 'deficiency contribution.' The rates per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system and shall be certified to the director of finance, and to the heads of the various departments, by the retirement board after each actual valuation. Beginning January 1, 1938, and until January 1, 1939, the state shall pay to the retirement board into such funds as the board may designate, an amount not exceeding one and twenty-five hundredths per centum of the earnable salary or compensation of each employe member, as may be certified by the retirement board. In computing the state's contribution as herein provided, the amount of a contributor's earnable salary or compensation in excess of two thousand dollars per annum shall not be considered."

It will be noted that the *state*, as employer, was required to begin January 1, 1939, to pay into the employer's accumulation fund the percentages to be fixed by actuarial computation. But when in 118 Ohio Laws, p. 471, the scope of the act was enlarged to include counties and other subdivisions, that provision for contribution to such funds was made to apply only to those subdivisions, and modified or at least postponed as to the state.

From the language of the statute before and since amendment, the intention of the Legislature appears obvious to require the counties and other subdivisions named, beginning January 1, 1939, to pay into the employer's accumulation fund of the public employes retirement system a certain percentage of the compensation of each employe member, to be known as the "normal contribution," and a further sum to be known as the "deficiency contribution." As to the state's contribution to that fund, the Legislature merely pledged the state to begin making such contributions January 1, 1941, and, under the terms of the later amendment, not to begin until January 1, 1943. By the terms of the statute before and after amendment, the rates per centum of such contribution are to be fixed on the basis of the liabilities of the retirement system and be certified to the director of finance and to the heads of the several departments, by the retirement board after such actuarial valuation. Sections 486-68b and 486-68c relate to the computation of the percentages above referred to.

By way of taking care of the contributions required from the state

to meet the state's share of the retirement allowance of state employees, who may be retired up to January 1, 1943, the state was to make what appears to be a stop-gap contribution, as stated in the final sentence of Section 486-68a, above quoted. By the terms of this provision it appears clear that until January 1, 1943, the Legislature intended only to require the state to pay in an "amount necessary" to take care of the actual current retirement allowance of its employees.

We must, however, call attention to the language of Section 486-68d. It was originally enacted along with Sections 486-68a, 486-68b and 486-68c, as supplementary to the original state employes retirement act, and is found in 117 Ohio Laws, p. 70. Section 486-68d was amended in 118 Ohio Laws, p. 471, and reads as follows:

"On and after January 1, 1939, each county, municipality, park district, conservancy district, health district and public library, and on and after January 1, 1941, the state shall pay into the employer's accumulation fund, in such monthly or less frequent installments as the retirement board shall require, an amount certified by the retirement board which shall equal the per centum of the total compensation, earnable by all contributors during the preceding year, which is the sum of the two rates per centum hereinbefore described and required to be computed, to wit, the sum of the normal contribution rate plus the deficiency contribution rate. The aggregate of all such payments by the state shall be sufficient, when combined with the amount in the employer's accumulation fund, to provide the pensions payable out of the fund during the year then current, and if not, the additional amount so required shall be collected by means of an increased rate per centum of the deficiency contribution which shall be certified to the state by the retirement board and shall continue in force for the period of one year."

This section appears to relate to the same contributions that are required of the state and the various subdivisions by Section 486-68a. But while the latter section was later amended so as to postpone the beginning of the state's contributions until January 1, 1943, no change was made in Section 486-63d, which still places the beginning date at January, 1941. This seeming inconsistency we must resolve in favor of Section 486-68a, as it is the later enactment, and would repeal Section 486-68d in so far as it is inconsistent.

House Bill 523, establishing a highway patrol retirement system, and creating a pension fund, was passed May 13, 1941, and became effective September 4, 1941. That act was codified as Sections 1181-13

to 1181-37, both inclusive of the General Code. Section 23 of the act (G.C. Sec. 1181-35) provides as follows:

“Beginning on the effective date of this act, any state highway patrol employe who is a member of the state highway patrol pension fund shall contribute four per centum of his annual salary. The auditor of state shall deduct from the compensation of each contributor on each and every payroll.

The state of Ohio shall pay into the state highway patrol pension fund an equal amount of each contributor. In event a contributor severs his connection with the state highway patrol, or is dismissed, the amount paid by the state shall remain in the state highway patrol pension fund.”

As stated in your letter, no appropriation has as yet been made to the highway patrol pension fund as contemplated by this section, and it appears that the state has undertaken by the appropriation mentioned in your letter, to the public employes retirement system of \$6,090.00 for 1941 and \$7,458.00 for 1942, to provide the “amount necessary” to cover retirement allowances during the biennium for employes of the highway patrol who still remain in the public employes retirement system.

The item to which you call attention in House Bill 665, making appropriations for the biennium ending December 31, 1942, was, in the light of the statutes to which I have referred, merely a maximum appropriation designed to cover the obligations of the state for the payment of retirement allowances of the employes of the highway patrol who are still in the public employes retirement system, and who might be retired during the period covered by the appropriation, and any unexpended balance in such appropriation is, by its terms, to lapse into the fund from which it had been appropriated.

Accordingly, in specific answer to your inquiry, it is my opinion that you would be authorized to pay out of the appropriation made to the public employes retirement system for the state highway patrol only such amounts as are needed to pay the retirement allowances of such employes of the highway patrol system as are still members of the public employes retirement system and entitled to participation therein, and who retire during the period covered by the appropriation.

Respectfully,

THOMAS J. HERBERT
Attorney General.