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1. TEACHERS IN PUBLIC SCHOOLS — MEMBERS, STATE TEACHERS RETIREMENT SYSTEM, WHERE REGULARLY EMPLOYED ON PER ANNUM BASIS—REQUIRED BY LAW TO CONTRIBUTE 4% TO SAVINGS FUND OF ALL COMPENSATION PAID FOR TEACHING — EFFECTS TEACHERS IN DAY SCHOOLS, NIGHT SCHOOLS, OR SUMMER SCHOOLS — AMOUNT SUBJECT TO LIMITATIONS FIXED BY LAW.
2. MEMBERSHIP — STATUS, TEACHERS IN NIGHT SCHOOLS, SUMMER SCHOOLS, TEMPORARY OR ANNUAL EMPLOYMENT — COMPENSATION, ONLY IN PART BY STATE — RESOLUTION, DENIAL OF RIGHT TO MEMBERSHIP.

SYLLABUS:

1. *Teachers in the public schools, who are regularly employed on a per annum basis, are members of the State Teachers Retirement System and as such are required by law to contribute to the teachers savings fund of the said system four per cent of all compensation received by them as a teacher, whether received as a teacher in the regular day schools or in night schools or summer schools subject to the limitations as to amount which are fixed by law.*

2. *Teachers in night schools or summer schools established by a board of education in accordance with law are by reason thereof, members of the State Teachers Retirement System unless they are employed on a temporary basis and not an annual basis or they are compensated in part only by the state, and the Teachers Retirement Board has by resolution denied them the right to become members.*

Columbus, Ohio, November 19, 1940.

Mr. George M. Pogue, Acting Secretary,
Ohio State Teachers Retirement System,
Columbus, Ohio.

Dear Mr. Pogue:

I am in receipt of your request for my opinion with respect to the following:

“A teacher’s salary in the regular day schools is \$1,800.00 annually. In addition, he works in the night schools and summer schools. Can he have the 4% deduction made on his earnings in these three positions not to exceed the maximum deposit of \$80.00?”

The Ohio State Teachers Retirement System established by act of the General Assembly of Ohio for the teachers of the public schools of the State of Ohio, was, by its terms, made to include the several funds created by the terms of the said act and placed thereby under the management of a “Retirement Board” for the purpose of providing for retirement allowances and other benefits to the members of the system in accordance with the terms of the said act and amendments thereto. Section 7896-1 et seq., General Code.

Included within the membership of the retirement system as provided by the act of the General Assembly mentioned above, are teachers in the public schools. It is provided in Section 7896-1, General Code, that the term “teacher” as used in the law relating to the retirement system, shall mean “any teacher or other person regularly employed in the public schools of the State of Ohio who is required by law to have a teacher’s certificate.”

Among the funds created by the terms of the retirement law for the purpose of providing a reservoir from which to pay retirement allowances and other benefits is the “teachers’ savings fund.” It is to this fund that a member of the retirement system is required to contribute four per cent of his compensation not exceeding \$2,000.00 per annum. The law provides in Section 7896-43, General Code, that each employer of a teacher member of the retirement system shall upon direction of the retirement board deduct from the compensation of such member an amount equal to four per cent of his compensation not exceeding \$2,000.00 per annum, and remit the same direct to the teachers retirement board. It is to the possibility under the law of making these deductions within the limits prescribed for any one year, from compensation earned for services in night schools and summer schools in addition to earnings of the member as a teacher in the regular day schools, that your inquiry is directed.

The maintenance of night schools by a board of education is authorized by Section 7679, General Code, where it is expressly provided that when night schools are established in accordance with the provisions of the statute the board of education shall “employ a competent person who holds a regularly issued teacher’s certificate, to teach it.” A similar express provision is

not made in the statute which authorizes a board of education to establish summer schools. This statute, Section 7647, General Code, reads as follows:

“The board of education in any city school district may establish and maintain a normal school within its district, and also establish and maintain such summer or vacation schools, school gardening and play grounds as to it seems desirable.”

Even though the above statute does not expressly provide that teachers in summer schools or vacation schools must possess a regularly issued teacher's certificate, it is my opinion that inasmuch as such schools are maintained if maintained at all, as a part of the public school system of the state and that the teachers therein are compensated if at all from state or federal funds, such teachers are required to have a teacher's certificate and that would be true as well with respect to teachers in night schools even if the statute authorizing their maintenance did not expressly provide as it does, that the teachers must hold a teacher's certificate. It is expressly provided in Section 7805-9, General Code, that all teachers in schools supported wholly or in part by the state or by federal funds, must hold a teacher's certificate else they may not lawfully be paid for their services. The said statute, Section 7805-9, General Code, reads as follows:

“No person shall receive any compensation for the performance of duties as teacher in any school supported wholly or in part by the state or by federal funds who has not obtained a certificate of qualifications for the position as provided for by law and which certificate shall further certify to the good moral character of the holder thereof.”

From the fact that teachers in night schools and summer schools must hold teacher's certificates in order to receive compensation, it clearly follows, in my opinion, that in view of the definition of a teacher as contained in the law relating to the teachers retirement system and the fact that that law makes all teachers, with certain exceptions not pertinent herein, members of the system, teachers in night schools and summer schools are, under the terms of the law members of the retirement system, whether they teach in the regular day schools or not, and therefore they would be required as such members to contribute to the teachers savings fund the same as teachers in the regular day schools and if teachers in the regular day schools rendered some service and received some compensation for services in night schools and summer schools they should contribute from this compensation to the same

extent they are required by the law to contribute from the compensation received for services performed in the day schools.

In some instances perhaps, special schools are conducted as summer schools or night schools where the teachers are employed on a temporary basis and not on an annual basis and in some cases where they are not paid in full by the state. As to such teachers, the retirement board may by resolution fix their status in relation to the teachers retirement system by authority of Section 7896-24, General Code, which provides as follows:

“The retirement board, notwithstanding the foregoing provisions, may deny the right to become members to any class of teachers, whose compensation is only partly paid by the state, or who are not serving on a per annum basis, or who are on a temporary basis, or who are not required to have a teacher’s certificate, and it may also, in its discretion, make optional with teachers in any such class their individual entrance into membership.”

The statute which provides for four per cent contribution of members to the teachers’ savings fund does not state that that contribution is to come exclusively from compensation received as teacher members in the day schools of a district but is so worded as to include in my opinion, all compensation received as a member of the retirement system. Its provisions in this respect read as follows:

“Sec. 7896-43. Each teacher who is a member of the retirement system shall contribute four per centum of his compensation not exceeding two thousand dollars per annum, to the teachers’ savings fund. Such contributions by direction of the retirement board, shall be deducted by the employer in either or both of two ways; * * *”

I am therefore of the opinion that:

1. Teachers in the public schools, who are regularly employed on a per annum basis, are members of the State Teachers Retirement System and as such are required by law to contribute to the teachers savings fund of the said system four per cent of all compensation received by them as a teacher, whether received as a teacher in the regular day schools or in night schools or summer schools subject to the limitations as to amount which are fixed by law.

2. Teachers in night schools or summer schools established by a board of education in accordance with law are by reason thereof, members of the State Teachers Retirement System unless they are employed on a temporary

basis and not an annual basis or they are compensated in part only by the state, and the Teachers Retirement Board has by resolution denied them the right to become members.

Respectfully,

THOMAS J. HERBERT,
Attorney General.