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RETIREMENT SYSTEM, PUBLIC EMPLOYES—MEMBER PASSED SEVENTIETH BIRTHDAY—DIED BEFORE RETIREMENT—ALLOWANCE GRANTED TO SURVIVING SPOUSE—COMPUTED AND PAYABLE FROM TIME OF DEATH—EQUAL IN AMOUNT TO THREE-FOURTHS OF AMOUNT OF RETIREMENT ALLOWANCE MEMBER WOULD HAVE RECEIVED HAD HE RETIRED AS OF LAST REGULAR SUPERANNUATION DATE PRECEDING DATE OF DEATH.

SYLLABUS:

Under the provision of Section 486-66, General Code, the allowance granted to a surviving spouse of a member of the Public Employes Retirement System who has passed his seventieth birthday and dies before retirement, is to be computed and be payable from the time of the death of such member and is to be equal in amount to three-fourths of the amount of the retirement allowance which such member would have been entitled to receive had he retired as of the last regular superannuation date preceding the date of his death.

Columbus, Ohio, September 10, 1948

Mr. Fred L. Schneider, Secretary, Public Employes Retirement System  
Columbus, Ohio

Dear Sir:

I have before me your communication in which you request an interpretation of that portion of Section 486-66, General Code, which relates to a pension or retirement allowance granted to the surviving spouse of a member of the system who dies after passing his seventieth birthday. The provision in question, reads as follows:

“Provided, however, any other provision of law notwithstanding, a member who has passed his or her seventieth birthday may by written designation elect, that in the event of his death before retirement, the retirement board shall grant to the surviving spouse a retirement allowance equal to three-fourths of the amount of the retirement allowance which such member would have been entitled to receive had he retired as of the last regular superannuation retirement date preceding the date of his death, providing the spouse has passed his or her sixty-fifth birthday.”

I take it that your only question is as to the time from which the allowance to the surviving spouse is to date. In other words, is it to date from the death of the member or from the last regular superannuation retirement date preceding his death?

The grant of this special allowance is to a “surviving spouse.” As members of the system may either be male or female, the survivor may be either wife or husband. For the sake of simplicity we shall assume that the employe is a male. Manifestly, a wife cannot be a surviving spouse until after the death of her husband. The purpose of the law is doubtless to make some provision for the surviving spouse of the member after he ceases to be a wage earner and to contribute to her support. It would seem rather absurd to give her the benefit of a retirement allowance covering the period when he was alive and presumably receiving a salary, and in my opinion the General Assembly has manifested no such intention.

It appears to me that the language of the statute is entirely consistent with the reasoning above indicated and plainly points to the conclusion that the surviving spouse is to enjoy this allowance only after the death

of the member, and that the words "equal to" are intended only to furnish a measure to determine the amount of that allowance. The statute does not say that the surviving spouse shall receive three-fourths of the amount to which the member would have been entitled had he retired on a day prior to the time of his death, but that she shall receive an allowance "equal to" such amount.

It is accordingly my opinion and you are advised that under the provision of Section 486-66, General Code, the allowance granted to a surviving spouse of a member of the Public Employes Retirement System who has passed his seventieth birthday and dies before retirement, is to be computed and be payable from the time of the death of such member and is to be equal in amount to three-fourths of the amount of the retirement allowance which such member would have been entitled to receive had he retired as of the last regular superannuation date preceding the date of his death.

Respectfully,

HUGH S. JENKINS,  
Attorney General.