

**OPINION NO. 79-079****Syllabus:**

By the terms of R.C. 3107.15, if a parent of a child dies without the relationship of parent and child having been previously terminated, and a spouse of the living parent thereafter adopts the child, the child's rights through the deceased parent to survivor's benefits under R.C. Chapter 145 are not restricted or curtailed by the adoption, R.C. 145.45(B)(4) notwithstanding.

**To: William S. McLaughlin, Executive Director, Public Employees Retirement System, Columbus, Ohio**

**By: William J. Brown, Attorney General, November 9, 1979**

I have before me your opinion request, which states, in pertinent part:

Chapter 145, Ohio Revised Code, among other things, provides for the payment of benefits to the surviving dependents of deceased members when certain criteria are met. In particular, Section 145.45, Ohio Revised Code, makes provision for such benefits to qualified dependents, however, these benefits are terminated upon the change of status of the dependent. Section 145.45(B)(4), Ohio Revised Code, provides:

"Benefits to a qualified dependent shall terminate upon remarriage, abandonment, adoption, or during active military service. Benefits shall begin or resume on the first of the month following the attainment of eligibility and shall terminate on the first month following loss of eligibility." (Emphasis added.)

In contrast to the above, Section 3107.15, Ohio Revised Code, the section governing the effect of adoption, states:

"Notwithstanding division (A) of this section, if a parent of a child dies without the relationship of parent and child having been previously terminated and a spouse of the living parent thereafter adopts the child, the child's rights from or through the deceased parent for all purposes, including inheritance and applicability or construction of documents, statutes, and instruments, are

not restricted or curtailed by the adoption."

As shown, Section 145.45(B)(4), Ohio Revised Code, provides for a termination of benefits as a result of the adoption of a qualified dependent. In the case of the adoption of a qualified dependent by the spouse of a living parent, which dependent is a child as defined in the above section, these two sections appear in certain conflict.

You are correct in perceiving a conflict between R.C. 145.45(B)(4) and R.C. 3107.15(B).

The Rules of Construction, R.C. Chapter 1, are designed to add clarity to and resolve conflicts between chapters and sections of the Ohio Revised Code. In particular, R.C. 1.51 states:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

R.C. 145.45(B)(4) governs a particular type of benefits—survivor's benefits from the Public Employees Retirement System. It provides, generally, that benefits to qualified dependents are terminated when a change of status such as marriage, remarriage, abandonment, adoption, or active military service has occurred.

R.C. 3107.15 governs the legal rights and relationships surrounding an adoption. R.C. 3107.15(A) provides, generally:

(A) A final decree of adoption and an interlocutory order of adoption that has become final, issued by a court of this state, shall have the following effects as to all matters within the jurisdiction or before a court of this state:

(1) Except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the biological or other legal parents of the adopted person of all parental rights and responsibilities, and to terminate all legal relationships between the adopted person and his relatives, including his biological or other legal parents, so that the adopted person thereafter is a stranger to his former relatives for all purposes including inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the person by name or by some designation not based on a parent and child or blood relationship;

(2) To create the relationship of parent and child between petitioner and the adopted person, as if the adopted person were a legitimate blood descendant of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted person from their operation or effect.

R.C. 3107.15(B) sets forth legal effects that apply in a particular situation—when a natural parent dies and the child is adopted by a spouse of the surviving parent.

Hence, with respect to the rights of an adopted child to receive benefits, R.C. 3107.15(A) sets forth the general rule that the adopted person shall not receive such benefits through his biological or former legal parents, but shall through the adopting parents. R.C. 145.45(B)(4) applies the rule of R.C. 3107.15(A) to a particular type of benefits; however, it uses the word "adopted" in a general sense and does not distinguish among different classes of adopted persons. R.C.

3107.15(B) provides an exception to R.C. 3107.15(A) for a particular class of adopted children. Although it applies generally to all types of benefits, rather than only to survivor's benefits, R.C. 3107.15(A) is more specific than R.C. 145.45(B)(4) with respect to the rights of a particular class of adopted persons.

Pursuant to R.C. 1.51, then, the apparent conflict between the general provision of R.C. 145.45 and the special provision of R.C. 3107.15(B) must be resolved in favor of the special provision unless the general provision is the later adoption and the manifest intent is that the general provision prevail. The general provision of R.C. 145.45 is not the later adoption. Although two amendments to R.C. 145.45 were adopted subsequent to January 1, 1977 (the effective date of R.C. 3107.15), those amendments did not affect the provision in question.

Furthermore, there is no manifest intent exhibited by the General Assembly that the general provision of R.C. 145.45 should prevail. Rather, it appears that the special section R.C. 3107.15 was meant to govern in the narrow scope of adoptions by a surviving parent's spouse.

R.C. 145.45(B)(4) expressly terminates a person's status as a "qualified dependent" upon adoption. Hence, absent some contrary provision, it is clear that a person who is a "qualified dependent" ceases to be such upon adoption. However, R.C. 3107.15(B) is just such a contrary provision. It provides:

Notwithstanding division (A) of this section, if a parent of a child dies without the relationship of parent and child having been previously terminated and a spouse of the living parent thereafter adopts the child, the child's rights from or through the deceased parent for all purposes, including inheritance and applicability or construction of documents, statutes, and instruments, are not restricted or curtailed by the adoption. (Emphasis added.)

By its terms this provision applies for all purposes, including the applicability of statutes in the context described. This specific language regarding a child's rights clearly expresses an intent that this section prevail over such prior adopted sections as R.C. 145.45(B)(4).

Furthermore, the exception in R.C. 3107.15(B) relating to a child adopted by the spouse of the living parent is very narrowly drawn. This indicates that the General Assembly carefully considered the exception in R.C. 3107.15(B) and emphasizes that the General Assembly intended that this provision control over R.C. 145.45(B)(4), which speaks of adoption generally as one type of change in status. Finally, by construing R.C. 3107.15(B) as clarifying the rights of a child under R.C. 145.45(B)(4) in the special situation where the child's natural parent dies and the child subsequently is adopted by a spouse of the surviving parent, maximum effect is given to both provisions.

Therefore, it is my opinion, and you are advised, that by the terms of R.C. 3107.15, if a parent of a child dies without the relationship of parent and child having been previously terminated, and a spouse of the living parent thereafter adopts the child, this child's rights through the deceased parent to survivor's benefits under R.C. Chapter 145 are not restricted or curtailed by the adoption, R.C. 145.45(B)(4) notwithstanding.

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<sup>1</sup>Am. Sub. H.B. No. 1 (eff. Aug. 26, 1977) and Am. H.B. No. 586 (eff. Aug. 26, 1977).