

OPINION NO. 88-090

Syllabus:

For purposes of R.C. 145.43 and R.C. 145.45, which provide for Public Employees Retirement System survivor benefits, and R.C. 3307.48 and R.C. 3307.49, which provide for State Teachers Retirement System survivor benefits, the term "child" does not include a stepchild. (1973 Op. Att'y Gen. No. 73-065 overruled.)

To: William S. McLaughlin, Executive Director, Public Employees Retirement System of Ohio, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 27, 1988

I have before me your request for my opinion concerning R.C. 145.43 and R.C. 145.45, the Public Employees Retirement System (PERS) survivor benefits statutes. These statutes provide for the payment of survivor benefits when a member of PERS dies before age and service retirement. Under R.C. 145.43, a child of a deceased PERS member may qualify for a lump sum payment of survivor benefits from PERS. Under R.C. 145.45, a child of a deceased PERS member may qualify for payment of monthly survivor benefits from PERS. You ask whether the term "child," as used in R.C. 145.43 and R.C. 145.45, includes a stepchild.

R.C. 145.43, which pertains to lump sum payments of survivor benefits, provides in pertinent part:

As used in this section "dependent child" is one defined in section 145.45 of the Revised Code.

(A) Should a member die subsequent to June 14, 1951, and before age and service or commuted age and service retirement, his accumulated contributions, any deposits for purchase of additional annuity and any payment he has made to restore previously forfeited service credit as provided in section 145.31 of the Revised Code, shall be paid to such person or persons as he has designated in writing....

....

....

(B) If a member dies before age and service or commuted age and service retirement and is not survived by a designated beneficiary, any survivors shall qualify as beneficiaries in the following order of precedence, with all attendant rights and privileges; (1) spouse; (2) *youngest dependent child* if (a) such child elects to take survivor benefits under division (B) of section 145.45 of the Revised Code, and (b) the total amount of survivor benefits payable to all dependent children by such election exceeds the amount of the accumulated

account subject to refund; (3) *children share and share alike*; (4) older parent; (5) estate. (Emphasis added.)

A child of a PERS member may qualify for a monthly benefit from PERS under R.C. 145.45, which provides in pertinent part:

In lieu of accepting the payment of the accumulated account of a member who dies before service retirement, a beneficiary, as determined in section 145.43 or this section of the Revised Code, may elect to forfeit the accumulated contributions and to substitute certain [monthly] benefits under division (A) or (B) of this section.

....
(B)

(2) Benefits shall begin as qualified dependents meet eligibility requirements as follows:

(a) Spouse of the deceased member, who is age sixty-two, or age fifty if the deceased member had ten or more years of Ohio service credit, or regardless of age if caring for a *dependent child*....

(b) *Dependent child shall be any unmarried child of the deceased member* under age eighteen, or under age twenty-two if the child is attending an institution of learning or training pursuant to a program designed to complete in each school year the equivalent of at least two-thirds of the full-time curriculum requirements of such institution and as further determined by board policy, or regardless of age if adjudged physically or mentally incompetent. If not domiciled in the deceased member's household at time of death, to qualify as a dependent child the deceased member must have contributed to one-half or more of the child's support during the twelve-month period prior to death. "Child" as used in this section includes a legally adopted child. (Emphasis added.)

The above statutes do not address whether a stepchild is to be considered a "child of the deceased member," and I am unaware of any cases which determine whether, for purposes of these statutes, the term "child" includes a stepchild. However, one court has addressed the issue of whether a stepchild is a "child" for purposes of the federal Railroad Retirement Act, which provides that children of a deceased retirant may qualify to receive unpaid annuities. In *Flanagan v. Railroad Retirement Board*, 332 F.2d 301 (3d Cir. 1964), the court held that under the Railroad Retirement Act, an employee's stepchild is not entitled to any unpaid accrued annuities after the death of the employee and his widow. In so holding, the court stated that:

it is undisputed that Mrs. Flanagan was merely a stepchild of the employee. A stepchild is defined as "the child of one of the spouses by a former marriage." Black's Law Dictionary, 4th ed. (1951). Such a person is not, in contemplation of law, one of a designated individual's "children" in the absence of a statutory declaration to that effect.

Id. at 303.

While there is no statutory declaration that for purposes of R.C. 145.43 and R.C. 145.45 the term "child" includes a stepchild, I must also examine whether the General Assembly intended that the term "child" include a stepchild. In attempting to ascertain the General Assembly's intent, it is sometimes helpful to compare the language of related statutes. See *Lake Shore Electric Ry. Co. v. Public Utilities Commission of Ohio*, 115 Ohio St. 311, 154 N.E. 239 (1926). I direct your attention to R.C. 2105.06, which provides that when a person dies intestate, a child of the intestate may stand to inherit as follows:

(A) If there is no surviving spouse, to the children of the intestate or their lineal descendants, per stirpes;

(B) If there is a spouse and one child or its lineal descendants surviving, the first sixty thousand dollars if the spouse is the natural or adoptive parent of the child, or the first twenty thousand dollars if the spouse is not the natural or adoptive parent of the child, plus one-half

of the balance of the intestate estate to the spouse and the remainder to the child or his lineal descendants, per stirpes;

....

(D) If there are *no children* or their lineal descendants, then the whole to the surviving spouse;

(E) If there is *no spouse and no children* or their lineal descendants, to the parents of the intestate equally, or to the surviving parent;

(F) If there is *no spouse, no children* or their lineal descendants, and no parent surviving, to the brothers and sisters, whether of the whole or of the half blood of the intestate, or their lineal descendants, per stirpes;

....

....

(I) If there are *no next of kin, to stepchildren* or their lineal descendants, per stirpes;

(J) If there are *no stepchildren or their lineal descendants, escheat to the state.* (Emphasis added.)

It is clear that for purposes of R.C. 2105.06, the term "child" does not include a stepchild. Both R.C. 2105.06 and R.C. 145.43 provide for beneficiaries when a person dies without having designated any particular beneficiaries. The fact that the General Assembly did not intend that the term "child" include a stepchild for purposes of R.C. 2105.06, provides support for the conclusion that the General Assembly did not intend that the term "child" include a stepchild for purposes of R.C. 145.43. *See generally Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948)(the General Assembly is presumed to have used terms advisedly and intelligently).

Moreover, R.C. 145.45(B)(2)(b) defines "dependent child" as "any unmarried child of the deceased member.... 'Child' as used in this section includes a legally adopted child." It is a well established rule of statutory construction that the naming of a specific class implies the exclusion of those not named. *See Craftsman Type, Inc. v. Lindley*, 6 Ohio St. 3d 82, 451 N.E.2d 768 (1983); *Kroger Co. v. Bowers*, 3 Ohio St. 2d 76, 209 N.E.2d 209 (1965). Although adopted children are included in the definition of "dependent child" in R.C. 145.45(B)(2)(b), stepchildren are not specifically included. Therefore, a stepchild, unless adopted, cannot qualify as a "dependent child" under R.C. 145.45(B)(2)(b). *See also* R.C. 3107.01(A)(defining "child" for purposes of adoption statutes as "a son or daughter, whether by *birth* or by *adoption*." (Emphasis added.) I note also that a PERS "member's marriage...the birth of his child, or his adoption of a child" automatically revokes a member's beneficiary designation. R.C. 145.43(A). There is no provision, however, for automatic revocation when a member becomes a stepparent. In accordance with the foregoing, I conclude that for purposes of R.C. 145.43 and R.C. 145.45, the term "child" does not include a stepchild.

In your opinion request, you refer to 1973 Op. Att'y Gen. No. 73-065, in which one of my predecessors concluded that the term "child" includes a stepchild for purposes of State Teachers Retirement System (STRS) survivor benefits statutes. The STRS survivor benefits statutes are virtually identical to the PERS survivor benefits statutes. *See* R.C. 3307.48; R.C. 3307.49. Thus, my conclusion that the term "child" does not include a stepchild applies to STRS, as well as the PERS, survivor benefits statutes. Rather than considering the statutory uses of the term "child" discussed above, my predecessor in Op. No. 73-065 relied on three cases: *Berkmeyer v. Kellerman*, 32 Ohio St. 239 (1877); *Wing v. Hibbert*, 7 Ohio N.P. 124 (C.P. Licking County 1897), *modified on appeal*, 11 Ohio Cir. Dec. 190 (Cir. Ct. Licking County 1899); and *Blair v. Keller*, 16 Ohio Misc. 157, 241 N.E.2d 767 (1968). *Berkmeyer* and *Wing*, however, do not address the issue of whether a stepchild is included within the term "child." *Blair*, the third case cited, addressed the issue of whether stepchildren who had lived with and been supported by their stepfather qualify, under R.C. 4123.59, for worker's compensation death benefits upon the death of their stepfather. The court noted that such stepchildren did not qualify as children of the deceased but held that the stepchildren qualified for benefits as members of the family of the deceased. This holding was based on the fact that R.C. 4123.59 permits members of the family who are not related to the

deceased to qualify for benefits. Thus, *Blair* does not support the proposition that the term "child" includes a stepchild. In light of the foregoing, I hereby overrule Op. No. 73-069.

Therefore, it is my opinion and you are advised that for purposes of R.C. 145.43 and R.C. 145.45, which provide for Public Employees Retirement System survivor benefits, and R.C. 3307.48 and R.C. 3307.49, which provide for State Teachers Retirement System survivor benefits, the term "child" does not include a stepchild. (1973 Op. Att'y Gen. No. 73-065 overruled.)¹

¹ Although a stepchild does not qualify as a "child" of the deceased for purposes of the PERS and STRS survivor benefits statutes, a stepchild may qualify for survivor benefits if he is designated by the member as a beneficiary or if he is adopted by the member. See R.C. 145.43(A); R.C. 145.45(B)(2)(b).