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RETIREMENT SYSTEM, SCHOOL EMPLOYEES — BENEFITS ER-
RONEOUSLY COLLECTED BY EXECUTOR OF ESTATE OF DE-
CEASED BENEFICIARY — PROCEDURE FOR REFUND.

SYLLABUS:

Procedure for the refund of retirement benefits erroneously collected by the executor of the estate of a deceased beneficiary of the School Employees Retirement System, outlined and discussed.

Columbus, Ohio, June 4, 1941.

Mr. T. G. O'Keefe, Secretary,
School Employees Retirement System, 12 North Third Street,
Columbus, Ohio.

Dear Sir:

I am in receipt of your request for my opinion, which reads as follows:

“The Retirement Board requests an opinion as to the proper method of handling a refund to the beneficiary of a deceased retired employe.

In brief, the case is as follows:

Mr. William Albert Jameson was retired on September 1, 1938, on a straight life annuity. He died at Columbus, Ohio, on January 14, 1941. After he retired, Mr. Jameson designated a beneficiary and directed the Retirement Board that in the event of his death said Retirement Board was to pay to Earl Jones Daving any balance due on account of the retirement allowance paid him by the School Employees Retirement System. At the time Mr. Jameson died there was due him a retirement allowance for fourteen days. The Retirement Board was not notified of Mr. Jameson's death on January 14, and, therefore, without knowledge of this fact, issued a check to him on January 28, 1941 for the month of January. The executrix of the estate cashed the check. It is the opinion of the Retirement Board that this check was not the property of the estate and that the executrix did not have the power to cash the retirement check since it was issued to Mr. Jameson and a statement appears on the

face of the check which requires the personal endorsement of the payee.

The question is: Whether the Retirement Board can require the estate of Mr. William Albert Jameson to return the January allowance issued by the Retirement Board, and then issue a check for the fourteen days' retirement allowance to the beneficiary, Mr. Earl Jones Daving, Columbus, Ohio?"

The law relating to the State Public School Employees Retirement System enacted originally in 1937, is contained in Section 7896-65 to Section 7896-129, inclusive, of the General Code of Ohio. Its purpose as stated in the law is to establish a Retirement System for the employees of the public schools of the State of Ohio who are not members of the State Teachers Retirement System or of any other retirement system established under the laws of this state, to include the several funds created by the terms of the law and placed under the management of a "Retirement Board" for the payment of retirement allowances and other benefits under the provisions of law (Section 7896-65, General Code).

By the terms of Section 7896-66, General Code, the general administration and management of the Retirement System thus established is vested in a Retirement Board which is thereby extended authority to make all necessary rules and regulations not inconsistent with the law to carry into effect its provisions.

Provision is made for the retirement of members in the said Retirement System and the payment to them upon retirement of certain retirement allowances in the form of annuities and pensions. Under rules and regulations consistently followed by the Retirement Board such retirement allowances as are provided for by law are paid to those members who retire, in monthly installments and any such installments or portions of installments that may be due and payable at the time of the death of any such retired member are paid to the estate of the member or to such person as he may designate during his lifetime to receive such payments.

Under circumstances such as are recited in your letter, the Retirement Board would, without a doubt, have remitted to Mr. Daving the proportionate amount of the January, 1941, installment of Mr. Jameson's annuity that had accrued up to January 14, 1941. Inasmuch as the board had no knowledge of Mr. Jameson's death at the time, or before the

January installment would have been due, if Mr. Jameson had lived, remittance was made by check in the amount of an entire month's installment. The check was made out to Mr. Jameson as payee, which would have been proper if he had been living and entitled to the full month's installment. The executor of his estate who is charged by law with the duty of collecting the personal assets of his decedent, cashed the check on behalf of the estate. The executor of course, may not have known that Mr. Jameson had named someone to receive what might be coming to him at the time of his death, and could not be expected to know the rules of the Retirement Board or what interest his decedent might have in the funds of the Retirement System at the time of his death. The check on its face purported to be a check for moneys owing the decedent. The fact that the check contained a statement that it required the personal endorsement of the payee, would not, in my opinion, be such notice as to negative good faith on the part of the executor in cashing the check, as any check requires the personal endorsement of the payee if he be living when the check is cashed. The executor, acting as the personal representative of his decedent and charged with the duty of reducing to money the assets of his decedent was undoubtedly acting in good faith when he cashed the check. That does not change the fact however, that the proceeds of the check under the circumstances, did not belong to the estate, and therefore should not be included in the inventory.

If an inventory has been filed and the amount in question is set out therein, such inventory should be amended to exclude therefrom the amount of the check covering the January, 1941, retirement allowance to Mr. Jameson. The executor should then pay to the Retirement Board such amount and said Board in turn pay to Mr. Daving an amount equal to fourteen-thirtieths thereof. If, however, an inventory has been filed and no action is taken by the executor to effect a refund of the moneys due the Retirement Board, said Board should file exceptions to the inventory. This, I feel, will likely not be necessary as the executor will no doubt, with the approval of the Probate Court, make a proper refund when requested to do so.

Respectfully,

THOMAS J. HERBERT,
Attorney General.