

Note from the Attorney General's Office:

1973 Op. Att'y Gen. No. 73-047 was overruled in part by
1981 Op. Att'y Gen. No. 81-024.

OPINION NO. 73-047

Syllabus:

Upon the death of a member of the State Highway Patrol retirement system, and in the absence of a beneficiary eligible for pension benefits, any portion of the member's personal contributions to the fund, still remaining therein, passes to his estate for distribution to his heirs.

To: Robert M. Chiramonte, Supt., Ohio State Highway Patrol, Columbus, Ohio
By: William J. Brown, Attorney General, May 14, 1973

I have your request for my opinion, which reads in part as follows:

Communications Technician III Richard D. Ridgway who had been a member of our Retirement System since November 1, 1950, died on August 7, 1970. At the time of his death he had contributed \$7332.76 to our Retirement System.

At Comm. Tech. III Ridgway's death a widow and one minor child were eligible for benefits from the Retirement System. The son later reached eighteen years of age and was removed from the pension rolls. Mrs. Ridgway subsequently died on September 20, 1972. At the time of her death there remained a balance of \$2867.60 from the contributions originally made by Comm. Tech. III Ridgway.

There are not now any survivors of Comm. Tech. III Ridgway eligible for pension benefits. The four surviving children, however, have written to the Retirement Board making a formal request to have the balance of their father's contributions to the Retirement System returned to them as a part of their father's estate.

The Retirement Board requests an opinion as to whether there is any statutory prohibition against the payment of these contributions to Mr. Ridgway's heirs.

There are no statutory prohibitions against the payment of these contributions to this highway patrolman's heirs. The State Highway Patrol has an independent and separate pension fund governed by R.C. 5505.17. This Section provides the guidelines for the distribution of retirement benefits to former State Highway Patrol officers, their widows, and surviving dependent children. The present case was initially governed by the pertinent paragraph of this Section, which reads as follows:

(A) (4) A surviving widow of a deceased member or retirant having one child shall receive a pension of one hundred eighty dollars per month until such child attains the age of eighteen years, or marries, whichever occurs first.

It was, however, the intent of the General Assembly that all contributions, made by members of the retirement system to the pension fund, be treated as the personal property of the contributing member. This meaning is clear throughout R.C. Chapter 5505, and is strengthened by the repeated reference to these contributions, both expressly and by implication, as the personal property of the contributing member.

R.C. 5505.01, the general definition Section of R.C. Chapter 5505, provides in pertinent part:

(L) "Accumulated contributions" means the sum of all amounts deducted from the salary of a member and credited to his individual account in the employees' savings fund.
(Emphasis added.)

Reference to a patrolmen's "individual account" and the repeated use of such phrases as "sum of all amounts" are clear indications that the ultimate amount of his contributions to the retirement fund was understood by the legislature to be the personal property of the contributing member. This statement is supported by the fact that these pension contributions were originally "deducted from the salary of a member", a salary earned, owned and initially possessed by the member. Such an arrangement brings to

kind an interest free savings account, which is undeniably an item of personal property that can be passed by will or through intestate succession.

Similarly, R.C. 5505.03 creates several separate "funds" within the State Highway Patrol. This choice of words is an express indication of the intent of the legislature to deal separately with the personal property of the member. The pertinent portion of R.C. 5505.03 is as follows:

(A) The funds created by this section are the "employees' savings fund," "employer's accumulation fund," "pension reserve fund," "survivor's benefit fund," "income fund," and "expense fund." When reference is made to any of such funds, such reference is made to each as a separate entity; provided that the moneys in said funds may be intermingled for deposit and investment purposes. (Emphasis added.)

R.C. 5505.11 also gives evidence of the personal nature of the employees' savings fund by providing that each member of the State Highway Patrol may demand a statement of the accumulated contributions credited to his "individual account" in the retirement fund. This section reads in part as follows:

The fiscal records of the retirement system shall be open to public inspection. Any member shall be furnished with a statement of his accumulated contributions standing to his credit in his individual account in the employees savings fund, upon his written request filed with the board; provided that the board shall not be required to answer more than one such request of a member in any one year. (Emphasis added.)

In addition, R.C. 5505.19 provides that any member of the State Highway Patrol who leaves the service shall have the right to withdraw from the retirement fund any accumulated contributions made by him during his association with the State Highway Patrol. This is an emphatic indication by the General Assembly that retirement fund contributions are the sole property and personal possession of the contributing officer. This section reads as follows:

A member of the state highway patrol retirement system who ceases to be an employee of the state highway patrol for any cause except his death, disability, or retirement, upon demand filed in writing with the state highway patrol retirement board, shall be paid the accumulated contributions less interest, standing to the credit of his individual account in the employees' savings fund. Except as otherwise provided in sections 5505.01 to 5505.24, inclusive, of the Revised Code, five years after a member ceases to be an employee of the patrol any balance of accumulated contributions standing to his credit in the employees' savings fund shall be forfeited and shall be transferred to the income fund. (Emphasis added.)

Finally, and most important of all, R.C. 5505.21 provides that a member of the State Highway Patrol retirement system who dies, leaving no one eligible for pension payments, may designate the person or persons to whom his accumulated retirement fund contributions shall be paid. In the event that no such beneficiary has been named, this Section provides for payment of these contributions according to the state law of descent and distribution. This Section reads as follows:

Should a member of the state highway patrol retirement system die and no pension becomes payable from funds of the system on account of his employment with the patrol, his accumulated contributions, less interest, standing to his credit in the employees savings fund at the time of his death shall be paid to such person or persons as he has nominated by written designation duly executed and filed with the state highway patrol, retirement board. If there is no such designated person or persons surviving such member, his accumulated contributions shall be paid according to the state law of descent and distribution; provided that if within seven years no person is found eligible to such amount it shall be forfeited and shall be transferred to the income fund of the state highway patrol retirement system. (Emphasis added.)

On the subject of interpreting the legislative intent behind an enacted statute, Sutherland's Statutory Construction states, at page 316, Volume No. 2:

The most common rule of statutory interpretation is the rule that a statute clear and unambiguous on its face need not and cannot be interpreted by a court and only those statutes which are ambiguous and of doubtful meaning are subject to the process of statutory interpretation. * * *

Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion. Caminetti v. United States, 242 U.S. 470, 61 L. Ed. 442, 37 Sup. Ct. 192 (1916); Hamilton v. Rathbone, 175 U.S. 414, 44 L. Ed. 219, 20 Sup. Ct. 155 (1899); cf. Church of the Holy Trinity v. United States, 143 U.S. 457, 36 L. Ed. 226, 12 Sup. Ct. 511 (1892).

In my opinion the intent of the General Assembly can readily be ascertained from the aforementioned sections of R.C. Chapter 5505. In view of the repeated treatment of a member's contributions to the fund as his own personal property, it is clear that any portion still remaining at his death should pass to his heirs in the absence of any beneficiary eligible for pension benefits.

In specific answer to your question it is my opinion, and you are so advised, that, upon the death of a member of the State

Highway Patrol retirement system, and in the absence of a beneficiary eligible for pension benefits, any portion of the member's personal contributions to the fund, still remaining therein, passes to his estate for distribution to his heirs.