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PUBLIC EMPLOYEES RETIREMENT SYSTEM—WAIVER OF SUPPLEMENTAL ALLOWANCE—§145.321(C) R.C.—SUCH WAIVER MAY BE OF ALL OR A PART OF SUCH SUPPLEMENTAL ALLOWANCE—WAIVER CONDITIONED BY ITS TERMS—SUCH WAIVER, WITHIN ITS TERMS, IRREVOCABLE.

SYLLABUS:

1. A waiver under the provisions of Section 145.321 (C), Revised Code, of the supplemental allowance provided by that section may be of the entire allowance or of any portion thereof and may relinquish the continuing right to such allowance for a specified period of time, a period of time limited by a contingency, or permanently.
2. A waiver made under the provisions of Section 145.321 (C), Revised Code, within the limits of its terms, is irrevocable.

Columbus, Ohio, January 15, 1958

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

Dear Sir:

Your request for my opinion reads as follows:

“The Retirement Board, at its last regular monthly meeting on October 17, instructed me to request your opinion relative to the following matter.

“Section 145.321, Revised Code, became effective September 13, 1957 (Am. Sub. H. B. 377). This section provides, in substance, that on and after October 1, 1957, all persons who are eligible to receive a monthly allowance, pension, or other benefit effective prior to June 29, 1955, which is payable pursuant to the provisions of sections 145.33 to 145.36, inclusive, and 145.46 of the Revised Code, or an allowance payable at any time under an option elected by a member and effective prior to that date, shall be paid an increased allowance in accordance with certain increases set forth in a schedule shown as part of subdivision (A) of this section.

“Subsection (C) of this section provides only that any person eligible to receive an increased allowance under the provision of this section may, at any time, “waive his right thereto.” Such waiver must be in writing and filed with the public employees retirement board.

“Although the language of the above quoted portion of subdivision (C) is unambiguous in that it clearly provides only that *the right to the increased allowance* may be waived, the question has been raised as to whether or not you are of the opinion that the retirant may go beyond this exact language of the subdivision and assert the right to waive only such part or portion of the increased allowance as he may select.

“You are, therefore, requested to advise the Public Employees Retirement Board, in an informal opinion, whether :

“1. The Legislature in granting such right to an increased allowance and providing for the waiver thereof, intended to also authorize the recipient to waive a part or portion of such increased allowance, and

“2. If your answer to this question be in the affirmative, whether such waiver may subsequently be withdrawn or modified.”

Section 145.321, Revised Code, reads in pertinent part as follows :

“On and after October 1, 1957, all persons in receipt of, or who are or become eligible to receive, a monthly allowance, pension, or other benefit effective prior to June 29, 1955, which is payable or becomes payable pursuant to the provisions of sections 145.33 to 145.36, inclusive, and 145.46 of the Revised Code, or an allowance payable at any time under an option elected by a member and effective prior to that date, shall be paid an increased allowance, pension, or benefit as follows :

“(A) An amount determined by increasing the original allowance, pension, or benefit by the following percentages as determined by the calendar year in which the allowance, pension or benefit became effective: * * *

“(B) If the amount of any such allowance, pension, or other benefit is increased by division (A) of this section to an amount less than one hundred ten per cent of the present amount payable immediately prior to October 1, 1957, such present amount shall be increased by ten per cent.

“(C) Any person who is eligible to receive, or becomes eligible to receive, an increased allowance under the provision of this section may, at any time, waive his right thereto by filing a written notice of waiver with the public employees retirement board.”

Initially, I think we may take note of the fact that the purpose of the General Assembly in making this provision for waiver was to prevent the loss to certain persons entitled to this supplemental allowance of certain other rights they may have under federal legislation. That is to say, the

right to certain such federal benefits is conditioned upon the beneficiary's not being in receipt of other income more than a specified amount; and if those entitled to the supplemental allowance provided by Section 145.321, Revised Code, were compelled to take it, some such persons would lose those federal benefits. If this new statute is ambiguous, it must be interpreted in the light of its purpose.

It must also be pointed out that a waiver, once effectively made, is irrevocable. It is defined as the voluntary relinquishment of a known right. *List and Son Co. v. Chase*, 80 Ohio St., 42, 49; *Auto Insurance Co. v. Van Buskirk*, 115 Ohio St., 598; 20 Ohio Jurisprudence 2d, 460; 56 American Jurisprudence, 102. It is by its terms final. Once a right is waived, the waiving party is estopped from later claiming the right waived.

A waiver made under this section need not, however, relinquish for all time the right to receive the supplemental allowance. A waiver is limited by its terms, and in general one may make a waiver in whatever terms he desires. Thus one may waive only a severable portion of a right, and a continuing right may be waived for a limited period of time. Such is the common-law right of waiver as it is generally understood, and so it exists here unless the statute otherwise requires.

The supplemental allowance is a right to receive a series of payments in money. I see no reason why such a right is not severable so that some of the payments or a portion of each payment might be waived. Accordingly, it is my opinion that the supplemental allowance conferred by Section 145.321, Revised Code, may be waived in whole or in part and that being a continuing right it may be waived either permanently or for a specified period of time, or for a period of time limited by a contingency.

This seems to me to be in accord with the purpose of the waiver provision. The General Assembly did not intend to compel persons to choose between this allowance and a federal benefit but rather intended that they should receive as much as possible under both.

It is my opinion, and you are advised, that :

1. A waiver under the provisions of Section 145.321 (C), Revised Code, of the supplemental allowance provided by that section may be of the entire allowance or of any portion thereof and may relinquish the continuing right to such allowance for a specified period of time, a period of time limited by a contingency, or permanently.

2. A waiver made under the provisions of Section 145.321 (C), Revised Code, within the limits of its terms, is irrevocable.

Respectfully,

WILLIAM SAXBE

Attorney General