5415.

STATE EMPLOYES RETIREMENT FUND—PROCEEDS PAYABLE TO SURVIVING BENEFICIARY UPON DEATH OF MEMBER.

SYLLABUS:

1. The interest of a beneficiary designated by a member of the State Employes Retirement System to receive his accumulated contributions in the event of his death before retirement, made in pursuance of Section 486-66, General Code, is a mere expectancy, and does not become vested until the death of the member before retirement and before the member changes the beneficiary or withdraws his accumulatd contributions.

2. Where several persons are designated co-beneficiaries to receive the accumulated contributions of a member of the State Employes Retirement System, without limitation or restriction, and one or more of those designated pre-deceases the member, those who survive will take the entire fund in the event the member dies before retirement and without having changed the beneficiary or having withdrawn his accumulated contributions.

COLUMBUS, OHIO, April 27, 1936.

HON. WILSON E. HOGE, *Secretary, State Employes Retirement Board, Wyandotte Building, Columbus, Ohio.*

DEAR SIR: I am in receipt of your letter concerning the disposition of the accumulated contributions in the State Employes Retirement Fund, of one Charles E. Thorne, a former member of that system who died February 29, 1936.

It appears that Mr. Thorne, who was then a state employe, and by reason thereof a member of the State Employes Retirement System, did on December 28, 1934, duly designate as his beneficiaries to whom his accumulated contributions in the State Employes Retirement System should be paid in case of his death before retirement, his daughter, Bessie Thorne Brooks and his son, Charles Brooks Thorne. This was done in pursuance of Section 486-66, General Code, by written designation duly executed and filed with the Retirement Board, and was in the following language:

> "Bessie Thorne Brooks and Charles Brooks Thorne, whose relationship to me is that of daughter and son."

On July 31, 1935, the son, Charles Brooks Thorne, was accidentally killed. On February 29, 1936, the contributing member, Charles E.

Thorne, died. No change had been made with respect to the beneficiaries after the first designation thereof.

Your question is, to whom shall the accumulated contributions of the said Charles E. Thorne be paid? The question turns on the meaning to be accorded to the terms of Section 486-66, General Code, as it applies to this situation. This section was enacted as a part of the act of the legislature establishing a retirement system for superannuated and incapacitated state employes, and reads as follows:

> "Should a contributor die before retirement, his accumulated contributions shall be paid to his estate or to such person as he shall have nominated by written designation duly executed and filed with the retirement board. If no legal representatives can be found, his accumulated contributions shall be forfeited to the retirement system and credited to the guarantee fund."

The above statute is precisely word for word identical with Section 7896-41, General Code, which section relates to contributions to the State Teachers Retirement System. Said Section 7896-41, General Code, was under consideration in my Opinion No. 5311, rendered under date of April 1, 1936, and addressed to the Retirement Board for the State Teachers Retirement System, and also in an earlier opinion reported in the Opinions of the Attorney General for 1934, page 231.

The questions considered in both of said opinions related to the payment of the accumulated contributions of a member of the State Teachers Retirement System who had died before retirement, and involved the construction of said Section 7896-41, General Code. In said Opinion No. 6311 the question considered grew out of a situation where a member of the State Teachers Retirement System had, upon his entrance to said system, duly designated his wife as his beneficiary, by naming her in such manner that there could be no question as to the identity of the person named. He later divorced this wife who had been designated as beneficiary, and married another, who was living at the time of his death. In the meantime, there had been no change in the designation of beneficiary. It was held that the former wife was the person designated as beneficiary, and she was entitled to the member's accumulated contributions upon his death before retirement if she was then living. If she had died before the death of the contributing member the accumulated contributions were payable to his estate.

I believe the observations made in that opinion with reference to the proper construction of the statute which is identical with the statute here involved, and the reasoning in the said opinion are applicable to the

question here presented. In the course of the said opinion, after quoting the statute, Section 7896-41, General Code, it is said:

> "It will be observed from the terms of the statute that the beneficiary that may receive the accumulated contributions spoken of, shall be a 'person' nominated by written designation. 'Nominate' means to name. 'Designate' means to point out a particular person. To 'describe her so no mistake could be made,' as stated by Judge Stephenson in the case of Fitzgibbons, Admr. v. Walcutt, 126 O. S., 450.
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> At the time the beneficiary in the instant case was 'nominated' or 'designated' there can be no question as to whom was meant. That written designation, inasmuch as it has not been superseded by a different designation, is the only guide your board has for the payment of these accumulated contributions."

In the instant case the persons named as beneficiaries were Bessie Thorne Brooks and Charles Brooks Thorne, the daughter and son respectively, of the said Charles E. Thorne. There can be no question as to their identity. Inasmuch as one of these persons named as beneficiary died prior to the death of the father, the only person in existence at the time of his death is the other one.

Moreover, the interest of the beneficiary under these statutes during the lifetime of the contributing member is a mere expectancy which becomes vested only upon the death of the beneficiary while still a member of the Retirement System before retirement. This interest may be lost by the member's "retirement" in accordance with the law relating thereto, his ceasing to be a member of the Retirement System, and the withdrawal by him of his accumulated contributions, or by his changing the beneficiary. That the beneficiary has no vested interest in the fund during the lifetime of the contributing member was noted by me in the 1934 opinion referred to above. In that respect his status with respect to the fund is analogous to that of a beneficiary named in the policy of a mutual benefit association. In the absence of any provision in the policy or the constitution and by-laws of the Association, to the contrary. In the case of Lentz, Executor v. Fritter, 92 O. S., 186, it is held:

> "The beneficiary named in the policy of a fraternal insurance associatoin has no vested interest therein during the life of the policyholder, and the latter may, within the limits prescribed by law and the constitution and by-laws of the association change his beneficiary at will."

See also 45 Corpus Juris, page 166.

Under this class of policies it has been held that where several persons are designated as co-beneficiaries of the proceeds of one certificate without limitation or qualification, and one or more of those designated as beneficiary predeceases the member, those who survive him take the entire fund.

Royal League v. Shields, 159 Ill. App., 54, affirmed by the Supreme Court, 251 Ill., 250, 36 L. R. A. (N. S.) 208;
Brooklyn Masonic Relief Association v. Hanson, 53 Hun, 149, 6 N. Y. S., 161.

It has been held in this state that where a life insurance policy was made payable to the insured's wife, and in case of her death during the lifetime of the insured to her children, and the wife predeceased the insured, leaving three children surviving one of whom also predeceased the insured but left a child surviving, the policy was paid to the two surviving children of the insured to the exclusion of both the administrator and the child of the deceased child.

22 Ohio Jur., 425;
Frank v. Bauman, 54 O. S., 621.

I am therefore of the opinion that the accumulated contributions of the said Charles E. Thorne should be paid to the daughter, Bessie Thorne Brooks.

Respectfully,
JOHN W. BRICKER,
Attorney General.

5416.

DISAPPROVAL—APPLICATION FOR REDUCTION OF CURRENT AND DELINQUENT RENTALS ON RESERVOIR LAND LEASE AT INDIAN LAKE, LOGAN COUNTY, OHIO —S. L. WILGUS.

COLUMBUS, OHIO, April 27, 1936.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of a recent communication from the Conservation Division of the Department of Agriculture, which communication is over the signature of the Chief of the Bureau of Inland Lakes and Parks and with which there is submitted for my examination and approval an application made by one S. L. Wilgus for