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RETIREMENT SYSTEM, TEACHERS—MEMBER FILED APPLICATION FOR RETIREMENT TO BE EFFECTIVE ONE OF “RETIREMENT DATES” SPECIFIED IN SECTION 3307.01 (S) RC—APPLICANT DIED ON RETIREMENT DATE—NOT ELIGIBLE FOR BENEFITS PAYABLE TO RETIRED MEMBERS OF SYSTEM—ACCUMULATED CONTRIBUTIONS—SHOULD BE PAID TO DESIGNATED BENEFICIARY—OR TO ESTATE OF MEMBER—SECTION 3307.48 RC.

SYLLABUS:

A member of the Teachers' Retirement System who has filed an application for retirement to be effective on one of the “retirement dates” specified by Section 3307.01(S) Revised Code, and who dies on such retirement date, has not become eligible for the benefits payable to retired members of such System. The accumulated contributions of such member, therefore, should be paid to the designated beneficiary, or to the estate of the member, in accordance with the provisions of Section 3307.48, Revised Code.

Columbus, Ohio, September 27, 1954

L. D. Shuter, Executive Secretary
The State Teachers Retirement System of Ohio
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Your formal opinion is requested in reply to the following questions.

‘What is the effective date of super-annuation retirement with an option selected by the member at the time of application?’

“Section 3307.33 of the Revised Code provides that a member who has attained sixty years of age and who has five or more years of service credit may apply for super-annuation retirement ‘as of the retirement date next following.’

“Section 3307.01 fixes regular retirement dates as follows:

‘The retirement dates for super-annuation and commuted superannuation retirement shall be the thirtieth days of June and September, and also the thirty-first day of August.’

"A member fully qualified for super-annuation retirement filed her application June 26, 1954. Her death occurred June 30, 1954, which was the 'retirement date next following'.

"In her application, she selected an optional plan of payment as provided in Section 3307.50, paragraph (C), and known as Option 3, as follows:

'Some other benefit shall be paid to the beneficiary or to such other person as he shall nominate, provided such other benefit, together with such lesser annuity, or lesser pension, or lesser retirement allowance, is certified by the actuary engaged by the retirement board to be of equivalent actuarial value to his annuity, his pension, or his retirement allowance, and *shall be approved by the board.*'

"QUESTIONS:

"May the Retirement Board approve her application for retirement effective June 30, 1954 including her election of the option?

"If not, on what date would her application have become effective had she lived?"

The single question presented by the above facts is whether a member of the Teachers Retirement System who dies on one of the "retirement dates" specified by statute has become eligible for the allowance paid to retired members of the system.

Section 3307.01 (S) Revised Code, provides as follows:

"(S) 'Year' for the administration of sections 3307.01 to 3307.72, inclusive, of the Revised Code, means the year beginning the first day of September and ending with the thirty-first day of August next following."

Paragraph (N) and (O) of that same section provide as follows:

"(N) 'Annuity' means payments for life derived from contributions made by a contributor and paid from the annuity and pension reserve fund. *All annuities shall be paid in twelve equal monthly installments.*"

"(O) 'Pensions' means annual payments for life derived from appropriations made by an employer and paid from the employer's accumulation fund or the annuity and pension reserve fund. *All pensions shall be paid in twelve equal monthly installments.*"
(Emphasis supplied.)

I quote the above sections because I believe they provide the key to the question which you have presented. The system is set up to

operate on a year which runs from September 1 to August 31. Allowances are paid in twelve equal monthly installments, each of which covers a period beginning on the first day and ending on the last day of a given month. While the statute speaks of the "retirement dates" as being on the last days of certain months, I believe that a proper analysis will show that such "dates" are really "last days of active service", and that retirement does not actually begin until the first day of the following month.

This can be illustrated by assuming a system under which the schools are in continuous session, so that we do not have any question of a teacher's being on his usual summer vacation. If a teacher announced his intention to retire on June 30 and that were a teaching day, he would be expected to teach through that day. Although referred to as his "retirement date", June 30 would actually be his last day of teaching service. I do not believe that he could be held to have achieved retired status and to be eligible for pension benefits on that day.

As another example, assume that the retirement of the member in question were held to have become effective on June 30, 1954. It would follow that he was also eligible for some retirement allowance, if only for one day. I do not believe it can be contended that the Retirement System owes this member's estate any payment on account of a retirement allowance, since he did not live into the month of July when his allowance would have become payable. If the member himself did not become eligible for a pension benefit, no beneficiary claiming through him under one of the so-called "option" plans can have a superior right.

It is therefore my opinion that a member of the Teachers Retirement System who has filed an application for retirement to be effective on one of the "retirement dates" specified by Section 3307.01 (S) Revised Code, and who dies on such retirement date, has not become eligible for the benefits payable to retired members of such System. The accumulated contributions of such member, therefore, should be paid to the designated beneficiary, or to the estate of the member, in accordance with the provisions of Section 3307.48, Revised Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General