

With the deed above mentioned you likewise submit certain releases executed respectively by one Ed L. Bryson and The Peoples Bank Company of Fort Recovery, Ohio, by which, the tract of land described in and conveyed by this deed is released and discharged from certain judgment and mortgage liens held by them on this property.

Upon examination of this deed, I find that the same has been properly executed and acknowledged by the above named grantors, and inasmuch as it appears that the tract of land conveyed to your society by this deed is either a part of the site of old Fort Recovery or is an addition thereto, I am of the opinion that this tract of land is such as you are authorized to acquire under the provisions of Section 10198-1, General Code, as said section is amended in 115 O. L. 207.

I am accordingly approving this deed as to legality and form, without any expression of opinion with respect to the title by which this property was owned and held by the heirs of Amelia Sunderman, deceased.

You will find enclosed herewith the deed above referred to with my approval endorsed thereon.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2329.

APPROVAL, NOTES OF JEFFERSON TOWNSHIP RURAL SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO—\$7,000.00.

COLUMBUS, OHIO, February 27, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2330.

APPROVAL, BONDS OF EDISON VILLAGE SCHOOL DISTRICT, MORROW COUNTY, OHIO—\$34,500.00.

COLUMBUS, OHIO, February 27, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2331.

BENEFICIARY—ACCUMULATED CONTRIBUTIONS OF MEMBER OF STATE TEACHERS RETIREMENT SYSTEM PAYABLE TO PERSON DESIGNATED REGARDLESS OF STATUS.

SYLLABUS:

Where a member of the State Teachers' Retirement System who had desig-

nated a person by name, followed by the descriptive words "whose relationship to me is that of wife" to whom his accumulated contributions should be paid in the event of his death or retirement, in pursuance of Section 7896-41, General Code, dies before retirement and it appears that the member and his wife were divorced after such designation had been made and no other person is subsequently named by the member to receive his accumulated contributions prior to his death, the accumulated contributions should be paid by the State Teachers' Retirement Board upon the death of the member before retirement, to the former wife of the member in accordance with the designation made.

COLUMBUS, OHIO, February 28, 1934

HON. W. E. KERSHNER, *Secretary, Ohio State Teachers Retirement System,
Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

The State Teachers Retirement System Law provides that a teacher may appoint a beneficiary to receive his deposits in the event of his death prior to retirement.

On February 25, 1929, designated as beneficiary Mrs., 'whose relationship to me is that of wife'. Mr. died on November 22, 1933, without having changed his beneficiary. Between February 25, 1929, and November 22, 1933, Mr. and his beneficiary were divorced. At Mr.'s death he had on deposit a little over \$300.00.

The attorney for the administrator claims that because Mrs. was not Mr.'s wife at the time of his death, the designation of her as beneficiary, is invalid, and that the refund should be made to the administrator. Her attorney claims that the change in marital status does not affect the designation. In all probability Mrs. will be appointed guardian of the three children.

Will you kindly tell me to whom we should pay this money?"

In the law creating the State Teachers' Retirement System and providing for its administration by the State Teachers' Retirement Board provision is made for the payment by the board of the accumulated contributions of a member in the event of his death before retirement by Section 7896-41, of the General Code of Ohio, which section 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 precise question presented by your inquiry has not been the subject of an opinion of this office or of a court decision in this state or elsewhere, so far as I have found. The cases dealing with beneficiaries under policies of insurance

issued by old line insurance companies and those in which similar clauses in benefit certificates of mutual benefit associations have been considered are not controlling in my opinion, in the instant case.

The substantial legal question involved in each of these classes of cases, as well as in the case here under consideration, is whether or not the insured, or the person making the designation of a beneficiary, when designating a person by name and identifying the one named as his "wife" had reference to a status or to the individual so named. This can not be determined in all cases from the actual intention of the party making the designation, as that intent is limited by applicable provisions of law. Where the insured under a policy of insurance of an old line insurance company, procured upon the application of the insured, designates his wife by name, as the beneficiary under the policy, there can be little doubt that the appointment of the beneficiary having been valid at the time it was made, will continue and will not be affected by a subsequent divorce even though the insured intended to designate a status rather than a specified individual at the time of designating his beneficiary. In other words, it is the settled law of this state at least, that so far as this class of insurance policies is concerned, a named beneficiary who had an insurable interest in the insured's life at the time of being so named, acquires a vested interest in the proceeds of the policy which will not be divested by a subsequent divorce. *Overhiser's Admrx. vs. Overhiser et al.*, 63 O. S. 77; *Connecticut Mutual Life Insurance Company vs. Schaefer*, 94 U. S. 457, 24 L. Ed. 251.

This same rule would probably be applicable to policies of mutual benefit associations as stated by the Supreme Court of West Virginia in the comparatively late case of *Huff et al. vs. Norfolk & Western Ry. Company et al.*, 104 W. Va. 464, 140 S. E. 335, were it not for the fact that the law under which associations are organized, in most states at least, including Ohio, and the constitution and by-laws or regulations of the society expressly or by necessary implication, require that the status of a beneficiary valid at its inception must continue to exist at the time of the death of the insured. The statutes under which a mutual benefit association is organized (Sections 9462 et seq. of the General Code), the application for membership therein, and the rules and regulations of the association, taken together, constitute the contract of insurance, and where these provide that the beneficiary of the insurance must bear a designated relationship to the insured (Section 9467, General Code) a person who does not bear that relationship at the time of the death of the insured, will not be permitted to take as beneficiary, the proceeds of a benefit certificate even though he or she may have been named therein as beneficiary. In this class of cases, the insured is said to be dealing with a status when designating a beneficiary because the contract of insurance requires a beneficiary to be of a certain status and where the beneficiary is designated by name, accompanied with the descriptive term "wife" the name is held to be merely descriptive of the status of "wife". *Fitzgibbons, Admr. vs. Walcutt*, 126 O. S. 450; *Brotherhood of Railroad Trainmen vs. Jane Taylor, Admr. et al.*, 9 O. C. C. (N. S.) 17; *Ladies of Honor vs. Kopitke*, 21 C. C. (N. S.) 374; *Kirkpatrick vs. Modern Woodmen of America*, 103 Ill. App. 468; *Huff et al. vs. Norfolk & Western Ry. Co. et al. supra.*

The same reasons do not apply in my opinion, to the designation by a member of the State Teachers' Retirement System of a person to whom his accumulated contributions should be paid upon his death before retirement, by virtue of Section 7896-41, General Code. Neither the law nor the application of the member nor the rules of the State Teachers' Retirement Board require, that such a person

must be a relative of the member or that he be of any particular status at the time of the death of the member or at the time of the nomination. A stranger so far as relationship to the member is concerned, might lawfully be so nominated. Neither can it be said by any course of reasoning or logic that a person so nominated by a member must have an insurable interest or a right to the accumulated contributions of the member and thereby acquire a vested interest in the member's contributions, as is the case of a beneficiary under a policy of insurance acquired from an old line insurance company upon the application of the insured.

The statute with which we are here dealing, Section 7896-41, *supra*, directs that the accumulated contributions of a member of the State Teachers' Retirement System, in case of the member's death or retirement, shall be paid to the "person" nominated by the member to receive such contribution, and where a "person" is so designated by name, followed by the descriptive words "whose relationship to me is that of wife", it is the person named that the member meant to nominate to receive the contributions. The term "wife" should be regarded as merely descriptive of the person named and to state merely a status existing at the time of the nomination for the purpose of identifying the particular person. There is nothing in the law or in any action of the member to require or indicate that the relationship of wife or the status thus described should necessarily continue to or exist at the time of the death of the member, when the accumulated contributions become due and payable.

I am therefore of the opinion that in the case mentioned in your letter, the member's accumulated contributions should be paid by the State Teachers' Retirement Board to the former wife of the member in accordance with the member's designation of the person to receive those accumulated contributions.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2332.

HOSPITAL—ENTITLED TO REIMBURSEMENT FOR CARE AND TREATMENT OF INDIGENT PATIENTS SUFFERING MOTOR VEHICLE INJURIES WHEN—H. B. NO. 80 CONSTRUED.

SYLLABUS:

1. *Hospitals entitled to the benefits of House Bill No. 80 of the 90th General Assembly are entitled to reimbursement for the care and treatment of non-resident indigent patients suffering motor vehicle injuries within this state, which injuries occurred on or after the effective date of the act.*

2. *Such hospitals are not entitled to reimbursement for the care and treatment of residents who suffered motor vehicle injuries outside of the confines of the state even though such patients are brought back to the hospitals of this state for treatment.*

3. *Such hospitals are not entitled to reimbursement for caring for non-resident persons injured in other states and brought to hospitals in Ohio for treatment.*

4. *Such hospitals should not charge to the state fund the accounts of indi-*