

5311.

BENEFICIARY—STATE TEACHERS RETIREMENT SYSTEM—  
ACCUMULATED CONTRIBUTIONS PAYABLE TO PER-  
SON DESIGNATED REGARDLESS OF CHANGE OF  
STATUS.

SYLLABUS:

*If one John Doe, a member of the State Teachers' Retirement System, should nominate his wife as his beneficiary to receive his accumulated contributions in the event of his death before retirement, in pursuance of Section 7896-41, General Code, by written designation duly executed and filed with the State Teachers' Retirement Board in the following language: "Mrs. John Doe, whose relationship to me is that of wife", and should later become divorced from the said Mrs. John Doe, and again remarries and dies before retirement without making any change in his designation of beneficiary, the Mrs. John Doe who was the wife of said John Doe at the time of the designation of beneficiary is entitled to receive the said accumulated contributions at the time of the contributor's death if she is then living. If she dies before the death of the said John Doe, the accumulated contributions should under such circumstances be paid to the estate of the said John Doe.*

COLUMBUS, OHIO, April 1, 1936.

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

GENTLEMEN: I have your request for my opinion concerning the following:

"On March 24, 1922, Mr. . . . . ., a teacher in the public schools of Ohio, designated 'Mrs. . . . . ., his wife', as his beneficiary in the State Teachers Retirement System of Ohio. In naming this beneficiary, Mr. . . . . . used his own given name instead of that of his wife.

Later Mr. . . . . . obtained a divorce from Mrs. . . . . . and married another woman. Recently Mr. . . . . . died without having made any change in his designation of beneficiary. The present whereabouts of the first wife are apparently unknown.

The attorneys for the second wife have now filed an application for the accumulated deposits belonging to Mr. . . . . .

Can we legally honor this application and pay this money to the second wife, and if not, how should it be disposed of?"

It appears that Mr. Arthur . . . . ., a member of the State Teachers Retirement System, at the time of his designation of beneficiary to receive his accumulated contributions in the event of his death before retirement, in pursuance of Section 7896-41, General Code, designated said beneficiary by proper writing duly executed and filed with the Retirement Board, in the following language: "Mrs. Arthur . . . . ., whose relationship to me is that of wife." Her given name was Mae, but that name was not used.

Later Mr. Arthur . . . . . obtained a divorce from the said Mae . . . . . and remarried. He died on December 8, 1935, before retirement and without having made any change in his designation of beneficiary. At the time of his death, his second wife, who was then Mrs. Arthur . . . . ., was living, and now contends that she is entitled to his accumulated contributions to the State Teachers Retirement System as she was Mrs. Arthur . . . . . and the wife of Arthur . . . . . at the time of his death.

In a former opinion rendered by me, which opinion will be found in the published Opinions of the Attorney General for 1934, at page 231, there was involved a very similar, if not in fact the precise question here presented. The only difference between the case considered in the former opinion and the instant case is that in the former case the given name of the beneficiary was used in the designation of beneficiary, whereas in the present case the given name of the husband prefixed by the title "Mrs." was used.

In the former opinion it was pointed out that cases involving beneficiaries under policies of insurance issued by old line insurance companies are of no pertinency in the consideration of similar questions arising with respect thereto under the State Teachers Retirement Law for the reason that the law requires a beneficiary under insurance policies of that kind, procured upon the application of the insured, to have an insurable interest in the insured's life at the time of being so named by the beneficiary, and thereby acquires a vested interest in the proceeds of the policy unless the right is reserved to change the beneficiary. It is well settled in this state at least, that a vested interest so acquired will not be divested by a subsequent divorce. *Overhiser's Admrx. v. Overhiser, et al.*, 63 O. S., 77; *Connecticut Mutual Life Insurance Co. v. Schaeffer*, 94 U. S., 457, 24 L. Ed., 251; *Valentine v. Von Schoyck*, 19 Abs., 526. Beneficiaries to receive accumulated contributions of a member of a State Teachers Retirement System named by authority of Section 7896-41, General Code, need not necessarily have an insurable interest in the contributor's life either at the time of being so named or at any other time.

For an equally cogent though different reason, cases involving beneficiaries under policies of mutual benefit associations and the like are not helpful in cases of the kind here presented. *Fitzgibbons, Admr., v. Wal-*

cutt, 126 O. S., 450; Brotherhood of R. R. Trainmen v. Taylor, Admr., et al., 9 O. C. C., 17; Ladies of Honor v. Koppittke, 21 O. C. C., 374; Huff et al. v. Norfolk & Western Ry. Co., 104 W. Va., 464.

There are no decided cases under the Ohio statute nor in any other jurisdiction under a similar statute so far as I have found, after a considerable search, that deal with the precise question here presented. The statute authorizing the naming of a beneficiary for the receipt of the accumulated contributions of a member of the State Teachers Retirement System in the event of his death before retirement, is Section 7896-41, General Code, which 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.”

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, supra. At the time the beneficiary in the instant case was “nominated” or “designated” there can be no question as to whom was meant. She was at the time the wife of Arthur . . . . ., and the fact that she was referred to as Mrs. Arthur instead of Mrs. Mae . . . . . can make no difference. The then wife of Mr. Arthur . . . . . manifestly was the person meant. There was at the time but one Mrs. Arthur . . . . . The identification is definite whether referred to as Mrs. Arthur . . . . . or by Mrs. Mae . . . . . It is a fact too well known to be disputed, that a married woman is as frequently referred to by the use of the Christian name of her husband preceded by the title “Mrs.” as by the use of her own Christian name. It follows that the then wife of Mr. Arthur . . . . . is the “person” as spoken of in the statute who was named by written designation executed and filed with your board as the beneficiary of the accumulated contributions of Mr. . . . . . in the event of his death before retirement. 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.

It is useless to speculate on what the contributor may have had in mind at the time of naming or designating his beneficiary. He definitely and positively designated a “person” whose identity could not be ques-

tioned, and even though he might at the time have contemplated that later there would be another Mrs. Arthur . . . . ., which is not likely, or after his divorce thought his former designation of Mrs. Arthur . . . . . as his beneficiary would suffice to give the second Mrs. Arthur . . . . . the right to collect his accumulated contributions in the event of his death it can make no difference, as he never nominated by written designation filed with the Retirement Board any other person than the first Mrs. Arthur . . . . . who bore to him at the time the relationship of wife, and that is the "person" to whom the contributions should be paid.

In my former opinion referred to above, it was held:

"Where a member of the State Teachers' Retirement System who had designated 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."

In the course of the opinion, it was said:

"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."

In my opinion, a definite "person" was designated by the use of the name Mrs. Arthur . . . . . in the instant case, the same as though the name Mrs. Mae . . . . . had been used, and it is this person so designated, who is entitled to the accumulated contributions of the said Mr. Arthur . . . . ., if she is now living, and if she was living at the time of the death of Mr. Arthur . . . . . and has since died, her estate is entitled to these contributions. If she had died prior to the death of Mr. Arthur . . . . ., his accumulated contributions should be paid to his estate.

I am therefore of the opinion that the accumulated contributions of the said Mr. Arthur . . . . . should be paid by you to the person who was the wife of the said Mr. Arthur . . . . . at the time of his designation of beneficiary, or to her estate, or to his estate, as the case may be.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5312.

APPROVAL—BONDS OF VILLAGE OF WILLOUGHBY, LAKE COUNTY, OHIO, \$31,200.00.

COLUMBUS, OHIO, April 1, 1936.

*Industrial Commission of Ohio, Columbus, Ohio.*

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5313.

APPROVAL—BONDS OF ORANGE VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$1,000.000.

COLUMBUS, OHIO, April 1, 1936.

*Industrial Commission of Ohio, Columbus, Ohio.*

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5314.

APPROVAL—BONDS OF ORANGE VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$1,000.00.

COLUMBUS, OHIO, April 1, 1936.

*Industrial Commission of Ohio, Columbus, Ohio.*