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RETIREMENT SYSTEM, STATE TEACHERS—WHERE MEMBER DESIGNATED A BENEFICIARY TO RECEIVE CONTRIBUTIONS IN CASE OF DEATH—MEMBER DIES BEFORE EFFECTIVE DATE OF ENACTMENT OF SECTION 7896-41a G. C.—BENEFICIARY NOT ENTITLED TO BENEFIT OF OPTIONS PROVIDED BY STATUTE.

SYLLABUS:

Where a member of the State Teachers Retirement System has, pursuant to the provisions of Section 7896-41, General Code, duly designated a beneficiary to receive his accumulated contributions in case of his death before retirement, and said member dies before the effective date of the enactment of Section 7896-41a, General Code, such beneficiary will not be entitled to the benefit of the options provided by said Section 7896-41a.

Columbus, Ohio, October 15, 1951

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

Dear Sir:

I have before me your request for my opinion, reading as follows:

“Section 7896-41a of the General Code of Ohio became effective June 14, 1951. In lieu of accepting the payment of the accumulated account, as provided by Section 7896-41 of the General Code, this supplemental section provides survivor benefits for certain beneficiaries of members who die prior to superannuation retirement.

“Will you kindly advise whether or not in your opinion a qualified beneficiary of a contributing member whose death occurred prior to the effective date of Section 7896-41a has the privilege of electing the survivor benefits provided thereunder?”

Section 7896-41, General Code, was amended and Section 7896-41a was enacted as a part of Amended Substitute Senate Bill No. 96, passed by the 99th General Assembly June 1, 1951, and effective as an emergency measure upon its approval by the Governor on June 14, 1951.

Prior to June 14, 1951 survivor benefits were governed by the provisions of Sections 7896-41 and 7896-42, General Code. These sections, in so far as pertinent to your inquiry, read as follows:

## Section 7896-41, General Code:

“Should a contractor die before retirement, his accumulated contributions shall be paid to his estate or to such person or persons as he shall have nominated by written designation duly executed and filed with the retirement board, unless the contributor has filed a written designation properly witnessed and executed limiting the beneficiary to a portion of the accumulated contribution and an annuity settlement, or exclusively to an annuity settlement, as provided in this section. Any beneficiary not so limited, may elect to have all or any portion of such accumulated contributions transferred to the annuity and pension reserve fund and to receive therefrom monthly annuity payments provided by the amount transferred, at annuity rates recommended by the actuary and fixed by the retirement board.  
\* \* \*”

## Section 7896-42, General Code:

“Until the first payment on account of any benefit is made, the beneficiary may elect to receive such benefit in a retirement allowance payable throughout life, or the beneficiary may then elect to receive the actuarial equivalent at that time of his annuity, his pension, or his retirement allowance, in a lesser annuity, or a lesser pension, or a lesser retirement allowance, payable throughout life with the provision that,

“Option 1—Upon his death, his annuity, his pension, or his retirement allowance, shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement. \* \* \*”

It will be noted that the right to choose Option 1 under Section 7896-42, General Code, was limited to the contributing member himself and then only at the time of his retirement. In case of death before retirement, the designated beneficiary was entitled, by virtue of Section 7896-41, General Code, only to the accumulated contributions of the deceased member or, in certain cases, to monthly annuity payments provided by such accumulated contributions. Section 7896-42 was not amended by the 99th General Assembly. Section 7896-41, as amended effective June 14, 1951, incorporated substantially all of old Section 7896-41, with certain changes not pertinent to your question, into paragraph (a) thereof. This section then continued:

“(b) In lieu of nominating a beneficiary to receive the accumulated contributions as provided above, a member who is eligible for a superannuation or commuted superannuation re-

retirement allowance as provided in sections 7896-35 and 7896-36 of the General Code, may nominate, by written designation duly executed and filed with the retirement board at least ten days prior to death, a dependent beneficiary who, in the event of the death of the member before retirement, shall be paid by the retirement board a retirement allowance computed as the joint survivor allowance designated as option I in section 7896-42 of the General Code, which the member would have received had he retired as of the last day of the month of death and had he at that time selected said joint survivor plan. Such payment shall begin with the subsequent month and the reserve funds shall be transferred as provided in section 7896-56 of the General Code. \* \* \*

By this amendment of Section 7896-41, General Code, the right to choose Option 1, already existing by virtue of Section 7896-42, General Code, but limited to the case where the member had retired, was extended to the case where a member was eligible to retire but had not done so,

Section 7896-41a, as newly enacted, reads in part as follows:

“In lieu of accepting the payment of the accumulated account of a member who dies before retirement as provided in section 7896-41, paragraph (a), of the General Code, (1) the surviving spouse if designated as a beneficiary or (2) certain other survivor if designated as a sole beneficiary and receiving at least one-half of his support from the member at his death may elect to forfeit such payment and to substitute certain other benefits described in paragraphs (a) and (b) of this section. If benefits are paid under paragraph (a) of this section, the accumulated account and the reserve from the normal contribution fund shall be transferred as provided in section 7896-56 of the General Code. If benefits are paid under paragraph (b) of this section, the accumulated account of the deceased member shall be transferred to the survivors' benefit fund.

“(a) If the deceased member was eligible for a superannuation or commuted superannuation retirement allowance as provided in sections 7896-35 and 7896-36 of the General Code, such designated beneficiary may elect to receive a retirement allowance computed as the joint survivor allowance designated as option 1 in section 7896-42 of the General Code, which the member would have received had he retired as of the last day of the month of death and had he at that time selected said joint survivor plan, and such payment shall begin with the subsequent month, or

“(b) If the deceased member had completed at least five years of credit for Ohio service, with at least one-fourth year of

credit within the two years prior to the date of death, certain designated beneficiaries may elect to receive monthly payments, provided they also meet the following requirements:

“(1) A surviving spouse sixty-five years of age, married to the member at least three years, and not remarried subsequent to the member’s death, who shall be paid fifty dollars per month. Such spouse may qualify for this benefit in addition to any payments she may have received as provided by (2) hereof.

“(2) A surviving widow, who has in her care an unmarried child of the deceased member under eighteen years of age, or any other progeny of the deceased member adjudged physically or mentally incompetent by a probate court in Ohio, shall be paid one hundred dollars per month.

“(3) An unmarried child of the deceased member under eighteen years of age shall be paid fifty dollars per month. If such child elects to take under this provision and there are one or more other unmarried children of the deceased member under eighteen years of age, there shall be paid a total amount of one hundred dollars per month which shall be divided equally between or among all such qualified children.

“(4) A dependent parent if at least sixty-five years of age who does not remarry subsequent to the member’s death shall be paid fifty dollars per month. If such parent elects to take under this provision and if the other parent of the member is also a dependent not remarried subsequent to the member’s death, such other parent shall also be paid fifty dollars per month if at least sixty-five years of age or when that age is attained. \* \* \*”

It will be seen that, by the terms of this section, certain survivors are afforded the opportunity of forfeiting the payment to which they would be entitled by reason of being designated as beneficiaries entitled to receive the payments provided by Section 7896-41, paragraph (a), and to accept in lieu thereof the benefits of Option 1 as provided in Section 7896-42 if the member, at the time of his death, was eligible for retirement or, if not so eligible, to accept certain specified sums if the member had at least five years of credit for Ohio service, with at least one-fourth year of credit within two years of his death.

Your question concerns the right of a “qualified beneficiary” to elect to take the increased benefits pursuant to Section 7896-41a, General Code, where the death of the contributing member took place before the effective date of such statute. By “qualified beneficiary” you, of course, have reference to a surviving spouse or to a designated sole beneficiary

receiving at least one-half of his support from the member at the time of the member's death.

In the case of the death of a contributing member prior to June 14, 1951, the law, as it then existed, limited the designated beneficiary, regardless of relationship or support, to the receipt of the accumulated contributions of the contributing member, with an election in certain cases of monthly annuity payments based on such accumulated contributions. The rights of the designated beneficiary to such payment necessarily accrued immediately upon the death of the contributing member. At the time of such death, said designated beneficiary was entitled to the benefits provided by Section 7896-41, General Code, as it then read, no more and no less.

Was it the intent of the General Assembly, by the enactment of Section 7896-41a, to increase, as of June 14, 1951, the rights which theretofore had accrued to such designated beneficiary? The answer to this question involves the consideration of certain principles of statutory construction.

It is stated in 37 Ohio Jurisprudence, page 819:

"It is considered against the policy of the law to give statutes a retroactive effect. Retrospective laws, accordingly, are not favored by the courts, which struggle to construe statutes so as to give them a prospective rather than a retrospective operation."

In 37 Ohio Jurisprudence, page 817, we find the following definition of a retrospective law.

"\* \* \* A retrospective law, in the legal sense, is one which takes away or impairs vested rights acquired under existing laws, or *creates a new obligation and imposes a new duty*, or attaches a new disability in respect of transactions or considerations already past. \* \* \*"  
(Emphasis added.)

Applying this principle, I believe it to be obvious that it was not the intent of the General Assembly to permit a survivor beneficiary who had received all or part of the benefits to which he was entitled at the time of the death of the member by virtue of old Section 7896-41 to surrender such benefits after June 14, 1951 and substitute the new benefits provided by Section 7896-41a. Necessarily, therefore, the intent of the General Assembly could only have been: (1) that under the pro-

visions of Section 7896-41a, General Code, a designated beneficiary, if within the class of relationship or dependency there specified, was eligible, after June 14, 1951, to receive the increased benefits therein provided even though his right to benefits at the time such right accrued prior to June 14, 1951 was limited to those benefits provided by old Section 7896-41, so long as he did not accept the payment to which he was theretofore entitled; or, (2) that the right of the designated beneficiary was fixed by the law as it existed at the time of the accrual of his right to benefits, i.e., at the time of the death of the contributing member.

It is my considered judgment that the first of these two possible meanings must be rejected.

In the first place, as indicated by the quotation from 37 Ohio Jurisprudence, at page 817, such a construction would create a new obligation and impose a new duty upon the Retirement Board of the State Teachers Retirement System in regard to transactions and considerations already past and result in construing the statute as a retrospective law.

While I know of no cases in point relative to the State Teachers Retirement System law, it has been the uniform holding of the Ohio courts, in construing pension and other welfare laws providing for payment to former employes, to determine the amount of payment based upon the terms of the law at the time such right of payment accrued, unless a later change in the law expressly provided that it was to apply retrospectively. *State, ex rel. Carroll v. McCarty*, 139 Ohio St., 654; *Industrial Commission v. Kamrath*, 118 Ohio St., 1; *State, ex rel. Longano v. Industrial Commission*, 135 Ohio St., 165.

In the second place, such an interpretation in many cases would make the right of the designated beneficiary to payment under Section 7896-41a, General Code, dependent upon the happenstance as to whether he had actually received the payment to which he was entitled under Section 7896-41, General Code. To illustrate, if "A", a contributing member, died on April 15, 1951 and "B", his designated beneficiary, received payment of "A's" accumulated contributions on May 15, 1951, "B" could not possibly qualify for the benefits provided by Section 7896-41a. But if "X", another contributing member, also died on April 15, 1951 and "Y", his designated beneficiary, was unavailable or made **no effort to obtain the accumulated contributions of "X" until after June**

14, 1951, "Y" could then elect to take the new benefits not existing prior to June 14, 1951. Recognizing that the Legislature necessarily intended to draw a clear-cut line of demarkation between those entitled to the new benefits and those not so entitled, it would not appear that the Legislature would base this line of demarkation upon pure happenstance.

In the third place, it will be noted that Section 7896-41a provides:

"In lieu of accepting the payment of the accumulated account of a *member* who *dies* before retirement as provided in section 7896-41a, *paragraph (a)*, of the General Code, \* \* \*."

(Emphasis added.)

Bearing in mind that this section became effective on June 14, 1951, and speaks only from that date, it must be observed that the section does not refer to the accumulated account of a member who *died*, but to a member who *dies*. A person, already dead on June 14, 1951, is not, in my opinion, "a member who dies." It should also be observed that a former member who had died before June 14, 1951 would not on that date appear to be "a member," as referred to in section 7896-41a and it will be noted that reference is made therein to Section 7896-41, paragraph (a). Prior to June 14, 1951 there was no paragraph (a) of Section 7896-41, although the entire section, as it then read, contained substantially the present provisions of said paragraph (a) as to accumulated contributions and the right of a designated beneficiary to receive the same. It would appear, however, that a designated beneficiary could not possibly be entitled to the payment "as provided by Section 7896-41, paragraph (a), of the General Code," unless the death of the contributing member took place after the effective date of the amendment of Section 7896-41 containing such paragraph. Not being entitled to the payment "as provided in Section 7896-41, paragraph (a), of the General Code," except upon the death of a contributing member after the effective date of the amendment of Section 7896-41, General Code, on June 14, 1951, it follows that a designated beneficiary could not take the benefits provided by Section 7896-41 in lieu of such payment, except upon the death of a contributing member after such amendment, effective June 14, 1951.

In light of the foregoing, it is my opinion that where a member of the State Teachers Retirement System has, pursuant to the provisions

of Section 7896-41, General Code, duly designated a beneficiary to receive his accumulated contributions in case of his death before retirement, and said member dies before the effective date of the enactment of Section 7896-41a, General Code, such beneficiary will not be entitled to the benefit of the options provided by said Section 7896-41a.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General