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PENSIONS, WIDOWS AND CHILDREN OF DECEASED FIREMEN AND POLICEMEN—PENSIONS GRANTED PRIOR TO 9/13/57 AND AFTER 9/25/47—ENTITLED TO INCREASE IN SUCH PENSIONS PROVIDED IN §§741.18, 741.49 RC.

## SYLLABUS:

Widows and children of deceased firemen and policemen who had been granted pensions in the firemen's and police relief and pension funds between September 25, 1947 and the effective date of the amendments of Sections 741.18 and 741.49, Revised Code, to-wit, September 13, 1957, are entitled to the increase in pensions set forth in such amendment.

Columbus, Ohio, November 8, 1957

Hon. James A. Rhodes, Auditor of State  
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion relative to certain amendments by the 102nd General Assembly, of the statutes fixing the pensions of widows and other dependents of firemen and policemen, members of their respective relief and pension funds, your specific question being as follows:

“Should pensions granted to widows and other dependents during the period from September 25, 1947, to the respective effective dates of the said amendments in September, 1957, be increased to amounts equal to those now provided by Sections 741.18 and 741.49, respectively?”

Under the statutes which became effective in 1947, reorganizing the firemen's and police relief and pension funds, it was provided in Section 741.18(F), Revised Code:

"A widow of a deceased member of the fund shall receive a pension of sixty dollars per month during her natural life or until she remarries, provided she was married to the deceased while he was in the active service of the department."

In division (G) of said section the following provision was made:

"Each surviving child of a deceased member shall receive a pension of thirty dollars per month until such child attains the age of eighteen years, or marries, whichever event occurs first. If a deceased member leaves a widow and more than three children eligible for pension payments, such children shall receive a pension of ninety dollars per month to be divided equally among them. If a deceased member leaves no widow and more than five children eligible for pension payments, such children shall receive a pension of one hundred fifty dollars per month to be divided equally among them."

In division (H) of said section, it was provided that if a deceased member leaves no widow or surviving children but leaves parents dependent upon him for support such parent or parents should receive a certain monthly pension.

Section 741.49, Revised Code, relating to the police relief and pension fund in divisions (F), (G) and (H) made identical provisions for the widow, surviving children and surviving parents of a deceased member of that fund.

The amendment of Sections 741.18 and 741.49, Revised Code, to which your request refers, consists merely in increasing the amount of the widow's monthly pension in each case, from \$50.00 to \$75.00, and the pension of dependent children from \$30.00 to \$35.00. No change is made in the amount of pension to be paid to surviving parents.

Prior to said amendments Section 741.20, Revised Code, relating to the firemen's fund, and Section 741.50, Revised Code, relating to the police relief and pension fund, provided in substantially like terms that if a widow, surviving child or dependent parent had been granted a pension pursuant to the rules and regulations of the respective boards which were in effect prior to September 25, 1947, and the amount of such pension is less than the amount provided for in divisions (F), (G) and (H) of the sections first herein referred to, then the board of trustees of the fund

“may increase the amount of the pension payable to each of said dependents in an amount *not to exceed* that provided in such divisions.” In the amendments to which you refer, these provisions have been changed so as to read “*shall* increase the amount of the pension payable to each of said beneficiaries *in an amount equal to that provided in such divisions.*”

The amendments above referred to were contained in Acts which became effective September 13, 1957.

The only question presented by your letter appears to be whether the above named dependents who are receiving pensions granted between the 1947 act and the 1957 enactment will receive the increases granted by the amended statutes from and after the effective date of the amendment, or whether they will continue to receive only the benefits that were provided in the previously existing statutes.

On first impression it appears that the answer to this question is elementary and should require no extended discussion or citation of authority. The new statute takes the place of the old, and from its effective date determines the rights of the beneficiaries. It is not a new grant, but merely the declaration of an increase in the amount which any person who is or may become entitled to a pension shall receive.

The only question that may arise which would cast a doubt upon the conclusion above indicated grows out of certain decisions which I understand have been urged on you, which would appear to suggest that the increased pensions provided in the recent amendments of Sections 741.18 and 741.49, *supra*, would apply only to widows and other dependents who become such by reason of the member of the fund dying *after* the effective date of such amendment. This idea was possibly suggested by the language of the syllabus in the case of State *ex rel.* Eden, v. Kundts *et al.*, 127 Ohio St., 276, and the language of the headnote to the case of State *ex rel.* Richmond v. Renner, 68 Abs., 1.

In the Eden case the second paragraph of the syllabus reads as follows :

“The right of a retired or dismissed police officer to a pension from such fund is governed by the rules adopted and in force at the time of his retirement or dismissal.”

If this decision could be construed as holding that a pension once granted is static, and not subject to increase by an amendment of the rules, that conclusion was speedily dissipated by the case of Mell v. State *ex rel.*, 130 Ohio St., 306, where it was held :

“An existing board of trustees of a pension fund has discretionary power to modify pension awards theretofore made by it or by predecessor boards, by *increasing* or reducing the amount thereof, provided the same is done reasonably and not arbitrarily.” (Emphasis added)

The court referred to the *Eden v. Kundts* case, and distinguished it as follows :

“The case of *State, ex rel. Eden, v. Kundts, supra*, announces the doctrine that ‘The right of a retired or dismissed police officer to a pension \* \* \* is governed entirely by the rules adopted and in force at the date of his retirement or dismissal.’ However, in that case, the bone of contention was the *right* of a retiring or dismissed police officer *to a pension*, which right is not questioned in this case. We are here concerned merely with the right of the board to *change the amount* of pensions previously allowed. \* \* \*” (Emphasis added)

The *Richmond* case, *supra*, which was decided by the Court of Appeals of Mahoning County in 1953, grew out of a situation where the relator, a minor child of a deceased policeman, was claiming a pension by reason of the death of her father which took place before the enactment of the 1947 Act above referred to. Under the rules of the pension board in existence prior to the 1947 Act, a minor child of a deceased police officer was *not entitled to a pension in case he left a widow*, but as has already been noted, after the enactment of the 1947 Act, a minor child was granted a separate pension of \$30.00 per month. The court accordingly held as stated in the headnote :

“The *rights* of one claiming a pension as a minor child of a deceased member of a police relief and pension fund are to be determined by the rules and statutes *in effect* at the time of the member’s death.” (Emphasis added)

It will be noted that these cases only relate to the *right to the pension* and have no reference to the *amount of the pension*. There is nothing in either of these cases which would in any way deprive a widow, child or other dependent of an officer who had died previous to the amendment, of the right to benefit by such increase. The precise question has been met in cases decided in other states.

In *Board of Trustees of the Pension Fund vs. Shupe*, 23 Ky., 269, 3 S. W. 2d, 606, the court had the same question under consideration. This case grew out of an amendment to the Kentucky statutes granting

an increase in payments under a police pension law, and the application of such increase to retired policemen who were on the pension rolls at a lower rate prior to the effective date of this amendment. On page 281, the court said:

“\* \* \* it follows that Shupe and those similarly situated are entitled to receive or be paid their pensions from and after the time this amendment became effective, to wit, June 16, 1926, *at the rate provided in the amendment.*” Emphasis added)

The same question was before the Illinois Appellate Court in *Milner v. Stafford, et al.*, 239 Ill. App., 346, where on page 359, the court said:

“In enacting laws 1923, page 251 \* \* \* providing for a pension to widows of police officers, it was the intention of the legislature, when it used in the amendatory act precisely the same language as was contained in the prior act, to confer the benefits of the amendment upon those who had been entitled to them under the former act, and simply to remove the limitations imposed by the prior act upon those who were already enjoying the benefits, as well as those who in the future would enjoy them.”

In this same case the court discussed the difference between the right to receive a pension as distinguished from the right to receive a specific amount and on page 353, said:

“A limitation or restriction on the amount of a pension has to do only with the remedy of the pensioner and nothing to do with her right to be a pensioner. Tested by any rule relating to construction of statutes, the amendment of 1923 did not grant any new right or enlarge any old right to a widow of a police officer who may have lost his life in the service, although its only purpose was to remove a restriction or limitation upon the old right.”

I have already pointed out that in the acts by which the 102nd General Assembly amended Sections 741.18 and 741.49, Revised Code, increasing the amount of pensions to dependents, it also amended Sections 741.20 and 741.50, Revised Code, which relate to pensions granted by the rules of the pension boards in effect before September 25, 1947, by making it *mandatory* that the board should increase their pensions to the full amount provided by the amendments of the other sections referred to. This appears to evince a clear intention that all widows, orphans and dependent parents of deceased members of the several funds should enjoy the full benefits of the increases specified in the amendments.

It is accordingly my opinion that widows and children of deceased firemen and policemen who had been granted pensions in the firemen's and police relief and pension funds between September 25, 1947 and the effective date of the amendment of Sections 741.18 and 741.49, Revised Code, to-wit, September 13, 1957, are entitled to the increase in pensions set forth in such amendment.

Respectfully,  
WILLIAM SAXBE  
Attorney General

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