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MEMBERS OF THE STATE TEACHERS RETIREMENT SYSTEM OF OHIO. MARRIAGE OR DIVORCE SHALL CONSTITUTE AN AUTOMATIC REVOCATION OF PREVIOUS DESIGNATION OF BENEFICIARY

SYLLABUS:

The provision in Section 3307.48, Revised Code, as effective August 1, 1959, to the effect that a member's marriage or divorce shall constitute an automatic revocation of his previous designation of beneficiary, applies to marriages entered into before that date as well as to marriages entered into on and after said date.

Columbus, Ohio, July 27, 1960

Hon. L. D. Shuter, Executive Secretary  
The State Teachers Retirement System of Ohio  
Columbus 15, Ohio

Dear Sir:

The question on which you request my opinion is as follows:

"Does the provision in Section 3307.48, Revised Code, to the effect that the member's marriage or divorce 'shall constitute an automatic revocation of his previous designation' apply only in cases of marriage or divorce occurring after the effective date of Amended Senate Bill No. 160?"

Section 3307.48, Revised Code, as amended by Amended Senate Bill No. 160, 103rd General Assembly, effective August 1, 1959, provides in part as follows:

“(A) Should a contributor die before superannuation retirement, his accumulated contributions shall be paid to such beneficiaries as he has nominated by written designation signed by him and filed with the state teachers retirement board prior to his death. *The nomination of beneficiary shall be on a form provided by the retirement board.* The last nomination of any beneficiary revokes all previous nominations. *The member’s marriage, divorce, or withdrawal of account shall constitute an automatic revocation of his previous designation.* If the accumulated contributions of a deceased member are not claimed by a beneficiary, or by the estate of the deceased member, within ten years, they shall be transferred to the guarantee fund and thereafter paid to such beneficiary or to the member’s estate upon application to the board. The board shall formulate and adopt rules and regulations governing all designations of beneficiaries.” (Emphasis denotes new matter added by 1959 amendment)

Article II, Section 28 of the Ohio Constitution prohibits the General Assembly from passing retroactive laws, or laws impairing the obligation of contracts. In this regard, it is provided in 10 Ohio Jurisprudence, 2d, Constitutional Law, Section 568, pages 618 and 619, as follows:

“One of the most popular definitions of retrospective or retroactive legislation is that of Judge Story, which is as follows: ‘Upon principle, every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective.’ This definition has met with judicial favor in Ohio. It is implied that if a statute does not come within the terms of the foregoing definition it is free from constitutional objection on the ground of retroactivity.”

There are two statutory rights acquired under pre-existing law involved in this case, i.e., the right of the previously designated beneficiary to receive benefits and the right of the member of the retirement system to designate such beneficiary. The question, therefore, is whether such rights were vested prior to the effective date of Amended Senate Bill No. 160, *supra*, which rights would now be taken away or impaired by the application of the provisions of such bill to marriages or divorces occurring before such effective date.

In *Arnold v. Browning*, 294 Ky. 164, 171 S. W., 2d, 239, a member of a firemen's pension fund retired in 1925. The law in effect at that time and at the time of his marriage in 1935 provided that upon a member's death his widow would receive a pension. In 1938 the law was amended to provide that only widows of deceased members who were married to such members at the time of the member's retirement could receive a pension. The member died in 1941, and the court held that the law in effect at the time of the member's death governed because the right of the widow to receive benefits could not vest until the death of the member which was after the effective date of the amendment. The amendment, therefore, was not retroactive. In the instant case, the right of the previously designated beneficiary to receive benefits does not vest until the death of the contributing member. Opinion No. 816, Opinions of the Attorney General for 1951, page 598. Because the death of the member would be after the effective date of Amended Senate Bill No. 160, *supra*, such bill is not retroactive as to such right.

The right of the member of the retirement system to designate his beneficiary is a material right, if not a vested one. *Voigt v. Kersten*, 164 Ill. 314. The application of the provisions of Amended Senate Bill No. 160, *supra*, to marriages or divorces occurring before the effective date of such bill does not, however, take away such right. If the General Assembly would have attempted in this bill either to establish a new beneficiary for the member by statute or to force the member, himself, to designate a new beneficiary, then such bill would be taking away the material right of the member to designate whomever he pleased as beneficiary and would thus be retroactive, *Voigt v. Kersten, supra; Wist v. Grand Lodge A.O.U.W.*, 22 Ore., 271. The only effect of this bill, however, is merely to revoke the member's previous designation of beneficiary when there is a change in his domestic relations. It could be argued that the member, himself, does not intend that his previous designation should take effect if there should be a change in his domestic relations. (See *Mundy's Executors v. Mundy*, 15 C.C. 155), but, nevertheless, he still has the right to designate whomever he pleases as beneficiary including his previous designee. Under these circumstances, the amendment "does not operate as a destruction of their power to appoint a beneficiary, or as a repudiation of the obligation of the society. They can comply with its terms and make the change of beneficiary and preserve the fund for his benefit." *Wist v. Grand Lodge, supra*, at page 281.

In view of the foregoing, therefore, it is my opinion and you are advised that the provision in Section 3307.48, Revised Code, as effective August 1, 1959, to the effect that a member's marriage or divorce shall constitute an automatic revocation of his previous designation of beneficiary, applies to marriages entered into before that date as well as to marriages entered into on and after said date.

Respectfully,

MARK McELROY

Attorney General