

1470.

PUBLIC EMPLOYES' RETIREMENT FUND—ACCUMULATED CONTRIBUTIONS IN CASE OF DEATH BEFORE RETIREMENT OF CONTRIBUTOR—WHERE CONTRIBUTOR, UNDER SECTION 486-66, G. C., DESIGNATED BENEFICIARY AND WAS MURDERED BY SUCH PERSON—FUNDS SHOULD NOT BE PAID TO MURDERER—PAYMENT SHOULD BE MADE TO PERSONAL REPRESENTATIVE OF DECEDENT'S ESTATE.

SYLLABUS:

Where a contributor to the Public Employes Retirement Fund, pursuant to Section 486-66, General Code, designates a person to whom shall be paid the accumulated contributions made by such contributor in case of his death before retirement, and where such contributor is murdered by the person so designated, the accumulated contributions should not be paid to such murderer. In such case such payment should be made to the personal representative of the estate of the deceased contributor.

COLUMBUS, OHIO, November 24, 1939.

HON. WILSON E. HOGE, *Secretary, Public Employes Retirement System, 32 East Gay Street, Columbus, Ohio.*

DEAR SIR: Your recent request for my opinion reads as follows:

"In August, 1938, Mary Margaret Dietz Lechler, an employe of the City of Cleveland, filed papers designating Carl Louis Lechler, described as 'husband' as her beneficiary to whom her accumulated contributions should be paid in the event of her death prior to retirement. On August 11, 1939, said Mary Margaret Dietz Lechler died of gun-shot wounds inflicted by her estranged husband, the above named Carl Louis Lechler. We have received an application for a refund of Mrs. Lechler's accumulated contributions signed by her mother, Mrs. A. Dietz, also of Cleveland. Mrs. Dietz also informs us that her daughter was never legally married to Carl Louis Lechler since he had not been legally divorced from a previous marriage.

Your opinion will be appreciated as to whether Carl Louis Lechler is eligible to receive her accumulated contributions and if not to whom the Retirement Board should make such payment."

In a supplemental communication you state that said Carl Louis Lechler has been convicted of the murder of Mary Margaret Dietz and

has been sentenced for life to the Ohio Penitentiary therefor. You also state that letters of administration on the estate of said Mary Margaret Dietz, deceased, were granted to Antonette Dietz on the 9th day of September, 1939.

Section 486-66, General Code, provides 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.”

This statute does not require that the person designated to receive the accumulated contributions be related in any degree to the contributor, and therefore even if the marriage between the deceased contributor and Carl Louis Lechler were bigamous on his part, he could nevertheless be designated to receive the accumulated contributions and would be legally entitled thereto.

You do not state whether this marriage was in fact bigamous on the part of the husband, and, if so, whether the contributor ever became apprised thereof. It may well be that marriage, bigamous on the part of the husband, which bigamy is concealed from his wife, would constitute such fraud as would cause a court of equity to cancel and rescind the designation of the husband to receive the accumulated contributions. However, in view of the conclusion which I have reached, it is unnecessary to determine this question. You have stated that Carl Louis Lechler has been convicted of the murder of the contributor, so this opinion is based upon that as an established fact.

The designation, pursuant to Section 486-66, General Code, of a person to receive the accumulated contributions of a contributor is analogous to the designation by the insured of a beneficiary of a life insurance policy, at least in so far as the present problem is concerned.

In the case of *Filmore v. The Metropolitan Life Insurance Company*, 82 O. S., 208, an action was brought by a beneficiary of an insurance policy upon the life of his deceased wife and the defense of the insurance company was that the plaintiff had murdered his deceased wife. The Supreme Court held this to be a valid defense and a judgment for the insurance company was affirmed. The first paragraph of the syllabus of this case reads as follows:

“The beneficiary in a life insurance policy cannot recover thereon where the death of the assured is caused by the intentional and felonious act of such beneficiary.”

In the opinion in the case the court quotes with approval the following language used by Mr. Justice Field in *New York Mutual Life Insurance Company v. Armstrong*, 117 U. S., 600:

“It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had wilfully fired.”

It is a well established principle of the common law that no one will be permitted to benefit from his own wrongful act or, as sometimes stated, “that no one shall be permitted to take advantage of his own wrong or to found any claim upon his own iniquity or to acquire property by his own crime.” See 9 R. C. L., 49. Whether this principle should be applied so as to prevent an heir from inheriting from an ancestor whom he has murdered in the absence of a statute forbidding such devolution or whether it should be limited to cases involving wills, contracts of insurance and the like, is a question upon which the authorities are in conflict. See *McAllister v. Fair*, 72 Kan., 533, 84 Pac., 112, and *Bryant v. Bryant*, 193 N. C., 372, 137 S. E., 188, 51 A. L. R., 1100. In Ohio the Circuit Court of Preble County in the case of *Deem v. Millikin*, 6 O. C. C., 357, 3 O. C. D., 491, held that an heir who murdered his intestate ancestor could not be excluded from inheriting from such ancestor. This decision was affirmed by the Supreme Court without opinion in 53 O. S., 668. Whether the Supreme Court of Ohio would still regard this case as sound in principle is doubtful in view of the trend of the modern decisions, but the General Assembly has removed this question from the realm of speculation by the enactment of Section 10503-17, General Code, which provides that a person finally adjudged guilty of murder in the first or second degree shall not be entitled to inherit or take under the statutes of descent or under a will from the person so murdered.

This statute is not broad enough in its terms to answer the question which you propound, but it certainly indicates a definite policy in this state that a murderer shall not benefit as a result of his own wrongdoing. The Ohio cases, since the decision of *Filmore v. Metropolitan Life Insurance Company*, *supra*, have uniformly and without exception refused to permit the beneficiary of an insurance policy who has murdered the insured to recover upon the policy. See *Cook v. Insurance Company*, 30 O. N. P. (N. S.), 247; *Prudential Insurance Company v. Howard*, 18 O. L. Abs., 688; *National Life Insurance Company v. Davis*, 30 O. App., 176. In view of the Ohio authorities and the reasoning contained therein, it must now be regarded as the settled law in this state that a murderer will not be permitted to take advantage of his own wrong and cannot reap a reward or validly claim a benefit as a result of his crime. This rule prevents the husband of the deceased contributor from receiving the

accumulated contributions which have been paid into the Public Employes Retirement Fund by her. Section 486-66, General Code, provides that the accumulated contributions shall be paid either to the person designated to receive them or to the estate of the deceased contributor. Since the person designated may not legally receive any accumulated contributions, they must under the terms of the statute be paid to the administratrix of the decedent.

I am therefore of the opinion that where a contributor to the Public Employes Retirement Fund, pursuant to Section 486-66, General Code, designates a person to whom shall be paid the accumulated contributions made by such contributor in case of his death before retirement, and where such contributor is murdered by the person so designated, the accumulated contributions should not be paid to such murderer. In such case such payment should be made to the personal representative of the estate of the deceased contributor.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1471.

BONDS — VILLAGE OF BAY, CUYAHOGA COUNTY, \$2,000.00.

COLUMBUS, OHIO, November 25, 1939.

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

GENTLEMEN :

RE: Bonds of Village of Bay, Cuyahoga County, Ohio,
\$2,000.

The above purchase of bonds appears to be part of a \$123,800 issue of refunding bonds, series A, of the above village dated October 1, 1937. The transcript relative to this issue was approved by this office in an opinion rendered to your Board under date of October 14, 1937, being Opinion No. 1313.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said village.

Respectfully,

THOMAS J. HERBERT,
Attorney General.