

3247

1. RETIREMENT SYSTEM, STATE TEACHERS — PROVISIONS, SECTION 3307.49 RC, APPLY WITH EQUAL FORCE TO SURVIVOR BENEFICIARIES OF MEMBERS OF THE SYSTEM WHO DIED SUBSEQUENT TO JUNE 14, 1951 AND PRIOR TO OCTOBER 26, 1953, AS WELL AS TO SURVIVOR BENEFICIARIES OF MEMBERS WHO DIE AFTER OCTOBER 26, 1953.
2. WHERE MEMBER'S ACCUMULATED ACCOUNT WAS WITHDRAWN PRIOR TO OCTOBER 26, 1953 — BENEFICIARY MAY NOT QUALIFY FOR SURVIVOR BENEFITS — SECTION 3307.49 RC.
3. PAYMENT OF RETIREMENT ALLOWANCE TO BENEFICIARIES OF MEMBERS DYING BETWEEN JUNE 14, 1951 AND OCTOBER 26, 1953 SHOULD COMMENCE WITH MONTH OF NOVEMBER, 1953 — ALLOWANCE COMPUTED AS OF MONTH OF MEMBER'S DEATH — SECTION 3307.49, DIVISION (A), RC.
4. WHERE MEMBER OF SYSTEM DIES WHILE RECEIVING DISABILITY RETIREMENT ALLOWANCE AND ACCUMULATED ACCOUNT IS COMPLETELY EXHAUSTED, SURVIVOR BENEFICIARY ELIGIBLE TO RECEIVE MONTHLY SURVIVOR BENEFITS — NO ACCUMULATED ACCOUNT, BENEFICIARY MIGHT ELECT NOT TO TAKE — SECTION 3307.49, DIVISION (B) RC.

## SYLLABUS:

1. The provisions of Section 3307.49, Revised Code effective October 26, 1953, apply with equal force to survivor beneficiaries of members of the State Teachers Retirement System who died subsequent to June 14, 1951 and prior to October 26, 1953, as well as to survivor beneficiaries of members who die after October 26, 1953.

2. A beneficiary may not qualify for the survivor benefits provided for in Section 3307.49, Revised Code, where the member's accumulated account had been withdrawn prior to October 26, 1953.

3. Payment of the retirement allowance pursuant to division (A) of Section 3307.49, Revised Code, to beneficiaries of members dying between June 14, 1951 and October 26, 1953 should commence with the month of November, 1953; such allowance to be computed as of the month of the member's death.

4. Where a member of the State Teachers Retirement System dies while receiving a disability retirement allowance, and the member's accumulated account is at that time completely exhausted, the survivor beneficiary, if otherwise qualified under division (B) of Section 3307.49, Revised Code, is eligible to receive monthly survivor benefits under that section, since there is no accumulated account which the beneficiary might elect not to take.

Columbus, Ohio, November 12, 1953

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

Dear Sir:

I have before me your request for my opinion which reads as follows:

"Amended Substitute House Bill 382, effective October 26, 1953, amends Section 3307.49 of the Revised Code to provide additional survivor benefits for certain beneficiaries of members who have died subsequent to June 14, 1951, as follows:

'Division (A) . . . If the deceased member had attained fifty-five years of age as of the date of his death subsequent to June 14, 1951, after completing at least twenty-five years of service credit, his designated beneficiary, if otherwise qualified, may elect to receive a retirement allowance computed as the joint survivor allowance designated as Option I in section 3307.50 of the Revised Code, as if the member had been qualified for commuted superannuation retirement, and provided the accumulated account has not been refunded to such beneficiary, . . .'

"1. If a member died subsequent to June 14, 1951 and prior to October 26, 1953, after completing the age and service requirements, may the Retirement Board grant his qualified beneficiary the benefit provided above if the accumulated account has not been refunded to such beneficiary?

"2. If such benefit is granted, when is the first payment thereunder due and payable?

"3. If granted, should the amount of the allowance be computed as of the month of the member's death, or as of the month the first payment is due and payable?

"Division (B) provides that a qualified beneficiary of a member who 'was receiving at the time of death a disability retirement allowance as provided in section 3307.43 of the Revised Code,' may elect to receive monthly survivor benefits.

"1. May the qualified beneficiary of a member granted disability retirement prior to October 26, 1953 be granted survivor benefits under this provision?"

"2. May such beneficiary qualify if the member died prior to October 26, 1953?"

"3. May such beneficiary qualify if there is no balance in the member's accumulated account to forfeit for such survivor benefits?"

"Division (B) (2) is an entirely new survivor benefit provision providing as follows:

'A surviving spouse fifty or more years of age receiving at least one-half of his support from the member at the time of the member's death; married to the member at least three years; and not remarried subsequent to the member's death, shall be paid fifty dollars per month if the deceased member had fifteen or more years of Ohio service credit at the time of death . . .'

"1. If a member died subsequent to June 14, 1951 and prior to October 26, 1953, may the Retirement Board grant his qualified beneficiary the survivor benefit provided therein? or

"2. Is such beneficiary required to wait until she attains age sixty-five and then qualify for the benefit under existing division (B) (1) of section 7896-41a of the General Code, effective June 14, 1951?"

"3. May such beneficiary qualify for such benefit by returning to the member's account the amount of the account paid her subsequent to her application for same?"

Your various related questions involve an interpretation of Amended House Bill No. 382 which was approved by the Governor July 27, 1953. More specifically you are concerned with the amendment of Section 7896-41a, General Code, Section 3307.49, R.C.

The portion of Section 3307.49, Revised Code, effective October 26, 1953, material to your first question, reads as follows:

"In lieu of accepting the payment of the accumulated account of a member *who dies subsequent to June 14, 1951*, and before retirement, as provided in division (A) of section 3307.48 of the Revised Code, the surviving spouse if designated as a beneficiary or a 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 either under division (A) or division (B) of this section. If benefits are paid under division (A) of this section, the accumulated account and the reserve

from the normal contribution fund shall be transferred as provided in section 3307.65 of the Revised Code. If benefits are paid under division (B) of this section, the accumulated account of the deceased member shall be transferred to the survivors' benefit fund.

“(A) \* \* \* If the deceased member had attained fifty-five years of age as of the date of his *death subsequent to June 14, 1951*, after completing at least twenty-five years of service credit, his designated beneficiary, if otherwise qualified, may elect to receive a retirement allowance computed as the joint survivor allowance designated as option I in section 3307.50 of the Revised Code, as if the member had been qualified for commuted superannuation retirement, and provided the accumulated account has not been refunded to such beneficiary \* \* \*.”

(Emphasis added.)

Your first question is whether the retirement board may grant the qualified beneficiary of a member who dies between June 14, 1951 and October 26, 1953 the benefit provided in division (A) above, provided of course that the accumulated account has never been refunded to the beneficiary.

The new law is unambiguous upon this point. The act expressly states that if the member “had attained fifty-five years of age *at the date of his death subsequent to June 14, 1951*, after completing at least twenty-five years of service credit,” his designated beneficiary may elect to receive the benefit.

June 14, 1951 is the date upon which survivor benefits were originally provided for by the legislature. It appears quite conclusively that division (A) was altered so as definitely to express the legislative intent to qualify the survivors of members who died between June 14, 1951 and October 26, 1953 for the same benefits as if the amendment had been in effect at the time of the member's death occurring during that two-year period. The statutes governing the Public Employes Retirement System and the School Employes Retirement System were amended in 1951 to reduce from thirty years to twenty-five years the service requirement for members retiring on commuted superannuation after attaining fifty-five years of age. The service requirement for members of the State Teachers Retirement System was left at thirty years, however. When, later in 1951, the laws governing the three retirement systems were further amended so as to provide survivor benefits for the spouse or other dependent of a member whose death occurred after he attained eligibility

for either commuted or regular superannuation retirement, survivors of members of the Teachers Retirement System were not placed in as advantageous a position as were survivors of members of the other two retirement systems. It was this inequality which the legislature intended to rectify by the enactment of the provision quoted above. Hence, if a member died subsequent to June 14, 1951 and prior to October 26, 1953, after attaining the age of fifty-five years and after completing at least twenty-five years of service credit, his designated beneficiary, if otherwise qualified, may elect to receive the benefit provided for in division (A) of Section 3307.49, Revised Code, provided that the member's accumulated account has not been refunded to such beneficiary.

Since it is clear that the benefit may be granted under the facts presented, the next question is: when is the first payment thereunder due and payable? I find nothing in the act which would suggest retroactive payments, i.e. payments which would cover the period subsequent to the death of the member and prior to the effective date of this amendment. Courts indulge in the presumption that the legislature intended statutes enacted by it to operate prospectively rather than retroactively. The general rule is that they are to be so construed if susceptible of such interpretation or unless the law is retroactive in terms which clearly show such legislative intention as to permit no possibility of any other construction. See 37 Ohio Jurisprudence, Statutes, Section 500, page 819.

It is provided in the case of designated beneficiaries *under division (B)* of the act, that benefits to such designated beneficiaries shall be payable the month subsequent to the death of the member and shall be terminated at death. I find no provision, however, relative to time of payment of beneficiaries under division (A) of the act. It is my opinion that payment should commence with the month following the effective date of the amendment, as though the member had died on October 26, 1953.

The question next presenting itself is whether the amount of the allowance should be computed as of the month of the member's death, or as of the month the first payment is due and payable.

It is my opinion that the amount of the allowance should be computed with reference to the month and year in which the member died. I understand that the amount of the retirement allowance is based upon the age of the member and the age of the beneficiary. It would seem

more equitable to calculate the amount of the allowance payable to a beneficiary of a member dying between June 14, 1951 and October 26, 1953 by taking *the actual date* upon which the member died as the reference point so far as relative ages are concerned, rather than employing the fiction that the member died October 26, 1953. I am of the opinion that the amendment should read, so far as it is practical to do so, as though it existed on the legislative books on June 14, 1951. Hence, though computation is made with reference to the actual date of the member's death, payment should commence only after the effective date of the amendment.

The next three questions have to do with the beneficiary of a member who was receiving at the time of his death a disability retirement allowance as provided in Section 3307.43 of the Revised Code.

Division (B) of Section 3307.49, Revised Code, so far as material to this question, reads as follows:

“If the deceased member \* \* \* was receiving at the time of death a disability retirement allowance as provided in section 3307.43 of the Revised Code, certain designated beneficiaries may elect to receive monthly payments, provided they also meet the following requirements:” (There follows five numbered paragraphs dealing with particular classifications of beneficiaries.)

You ask whether the qualified beneficiary of a member granted disability retirement prior to October 26, 1953, may be granted survivor benefits under the above provision. This question is akin to your next question, which is: “May such beneficiary qualify if the member died prior to October 26, 1953?”

I refer back to the first sentence in Section 3307.49, Revised Code, quoted earlier, which expresses the legislative intent that the survivor benefit provisions of both divisions (A) and (B) should apply to beneficiaries of members who die subsequent to June 14, 1951. Thus, if the deceased member was receiving a disability retirement allowance at the time of his death subsequent to June 14, 1951, the beneficiary, if otherwise qualified under paragraphs (1) through (5) of the division (B), may elect to receive monthly payments.

It is asked whether such a beneficiary might qualify for the monthly

payments if there is no balance in the member's accumulated account to forfeit for such survivor benefits.

It should be borne in mind that this particular benefit is granted to one who is the beneficiary of a member who actually went on disability retirement and whose accumulated account was at that time transferred to the annuity and pension reserve fund. The member dies while receiving a disability retirement allowance. It is quite possible that the member's entire account has been used up, leaving no balance whatsoever at the time of the disabled member's death. Such a situation is unlike the other situation where the law grants survivor benefits. In division (A) of Section 3307.49, a retirement allowance is payable to the beneficiary of a member who *had not retired*, but who had met certain age and service requirements. Under division (A), the beneficiary receives a retirement allowance computed as the joint survivor allowance designated as option I in Section 3307.50, Revised Code, "as if the member had been qualified for commuted superannuation retirement." Division (A) also contains a retirement allowance benefit for the beneficiary of a member who *was eligible* for a superannuation or commuted superannuation retirement allowance, but who had never actually applied for the allowance at the time of his death.

It will be observed that division (A) involves situations wherein there should naturally be an accumulated account on deposit with the system at the time of the member's death, since the member never chose to retire, an act which if accomplished, would result in the depletion of his accumulations throughout the retirement, and which eventually might completely exhaust his accumulated account at the time of his death.

It will be recalled that the benefits provided for in division (A) are *expressly* limited to a situation where the accumulated account *has not been refunded* to the beneficiary. Division (B) is silent upon this point.

It will also be recalled that Section 3307.49, Revised Code, commences:

*"In lieu of accepting the payment of the accumulated account of a member who dies subsequent to June 14, 1951 \* \* \* a beneficiary \* \* \* may elect \* \* \*."*

In a situation wherein a member dies while receiving a disability retirement allowance, which allowance has entirely used up his accumulations, there is nothing left for his beneficiary to elect not to take.

Therefore, the qualified beneficiary may take the monthly payments provided for in division (B). If, on the other hand, there exists a balance in the disabled member's account at the time of his death, occurring between June 14, 1951 and October 26, 1953, and the beneficiary has not withdrawn the accumulated account, she may elect to forfeit the account and receive the benefits provided for by division (B) of the section. A *voluntary* withdrawal by the beneficiary of the balance of the member's account would disqualify such beneficiary from eligibility to receive survivors' benefits. In the case where the member dies receiving a disability retirement allowance, leaving no balance in his account, it might be said that his accumulated account has ceased to exist by operation of law. Certainly, in that instance, it cannot be said that the *beneficiary* has withdrawn the account.

The last three questions deal with paragraph (2) of division (B), Section 3307.49, Revised Code. This paragraph reads in material part as follows:

“A surviving spouse fifty or more years of age receiving at least one-half of his support from the member at the time of the member's death; married to the member at least three years; and not remarried subsequent to the member's death; shall be paid fifty dollars per month if the deceased member had attained fifteen or more years of Ohio service credit at the time of death. \* \* \*”

This paragraph is an entirely new survivor benefit provision. Previous to the enactment it was necessary for a spouse to have attained the age of sixty-five years before being eligible to elect the monthly benefit. It is my opinion that this quoted paragraph applies to a situation where a member dies subsequent to June 14, 1951 and prior to October 26, 1953. Again, I arrive at this result due to the fact that the entire section is qualified by its first sentence which allows benefits to beneficiaries of members who die “subsequent to June 14, 1951.” The beneficiary is not required to wait until she attains the age of sixty-five and then qualify for the benefit now found under division (B) (1) of Section 3307.49, Revised Code. Therefore, if the qualified beneficiary was fifty years old at the time of the member's death occurring since June 14, 1951, and if she was receiving at least one-half of her support from the member at the time and had been married to the member at least three years, she is eligible for payments of fifty dollars per month,



provided the deceased member had fifteen or more years of Ohio service credit at the time of death, and provided the beneficiary has not remarried subsequent to the member's death.

Your last question presupposes that the beneficiary has received, at some time subsequent to June 14, 1951, a refund of the accumulated account of the member, and you ask whether the beneficiary might still qualify for the benefit by returning to the member's account the amount of the account paid her subsequent to her application for the same.

I find no statute making provision for any beneficiary who has received the refund of the accumulated account of a member to repay the amount of such refund to the system. I must therefore conclude that such a beneficiary cannot qualify for survivors' benefits. It appears that the legislature has rewarded certain beneficiaries who left on deposit with the retirement system the accumulated account of the deceased member, even though they might have withdrawn the account.

Accordingly, it is my opinion that the provisions of Section 3307.49, Revised Code, effective October 26, 1953, apply with equal force to survivor beneficiaries of members of the State Teachers Retirement System who died subsequent to June 14, 1951 and prior to October 26, 1953, as well as to survivor beneficiaries of members who die subsequent to October 26, 1953; that a beneficiary may not qualify for the survivor benefits provided for in Section 3307.49, Revised Code, where the member's accumulated account had been withdrawn prior to October 26, 1953; that payment of the retirement allowance pursuant to division (A) of Section 3307.49, Revised Code, to beneficiaries of members dying between June 14, 1951 and October 26, 1953 should commence with the month of November, 1953; such allowance to be computed as of the month of the member's death; that where a member of the State Teachers Retirement System dies while receiving a disability retirement allowance, and the member's accumulated account is at that time completely exhausted, the survivor beneficiary, if otherwise qualified under division (B) of Section 3307.49, Revised Code, is eligible to receive monthly survivor benefits under that section, since there is no accumulated account which the beneficiary might elect not to take.

Respectfully,

C. WILLIAM O'NEILL

Attorney General