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RETIREMENT SYSTEM, PUBLIC EMPLOYES:

1. VOLUNTARY DEPOSITS IN SAVING FUND—MADE BY MEMBER UNDER AUTHORITY OF SECTION 145.23 (C) RC—NOT PART OF ACCUMULATED CONTRIBUTIONS AS TERM IS DEFINED IN PARAGRAPH (J) OF SECTION 145.01 RC.
2. WHERE MEMBER DIES BEFORE RETIREMENT — HAVING ON DEPOSIT WITH SYSTEM A SUM OF MONEY VOLUNTARILY DEPOSITED—THE SUM DOES NOT PASS TO DESIGNATED BENEFICIARY TO RECEIVE ACCUMULATED CONTRIBUTIONS.
3. BENEFICIARY — WHO ELECTED TO TAKE SURVIVOR'S BENEFITS—MUST FORFEIT ACCUMULATED ACCOUNT, THE SUM DEDUCTED FROM COMPENSATION OF MEMBER DURING TERM OF PUBLIC EMPLOYMENT PLUS ANY PAYMENT MADE BY MEMBER TO RESTORE PREVIOUSLY FORFEITED SERVICE CREDIT—VOLUNTARY DEPOSITS TO ENHANCE PROSPECTIVE ANNUITY RIGHTS PASS TO ESTATE OF MEMBER IN EVENT OF DEATH BEFORE RETIREMENT.

SYLLABUS:

1. Voluntary deposits in the employee's savings fund, made by a member of the public employes retirement system under authority of Section 145.23 (C), Revised Code, do not constitute a part of the "accumulated contributions" of the member as that term is defined in paragraph (J) of Section 145.01, Revised Code.

2. Where a member of the public employes retirement system dies before retirement, having on deposit with the system a sum of money deposited voluntarily, pursuant to Section 145.23 (C), Revised Code, such sum does not pass to the beneficiary designated by the member to receive the "accumulated contributions" of the member, pursuant to Section 145.43, Revised Code.

3. A beneficiary, in electing to take survivors' benefits under Section 145.45, Revised Code, must forfeit the accumulated account of the member, which is the sum deducted from the compensation of the member during his term of public employment, plus any payment made by the member to restore previously forfeited service credit; however, voluntary deposits made by the member pursuant to Section 145.23 (C), Revised Code, for the purpose of enhancing his prospective annuity rights upon retirement, pass to the estate of the member in the event of the member's death before retirement.

Columbus, Ohio, December 1, 1953

Hon. Fred L. Schneider, Executive Secretary
Public Retirement System, Columbus, Ohio

Dear Sir:

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

"The section under which the applicant for this particular survivor benefit, namely, a widow past 65 years of age, is covered by Section 145.45 of the Revised Code. In the first sentence of that section reference is made to the 'accumulated account of a member.' We do not find a definition of the phrase 'accumulated account' but sub-paragraph (J) of Section 145.01 R.C. defines 'Accumulated contributions' as meaning 'the sum of all amounts deducted from the compensation of a member and credited to his individual account in the employees' saving fund together with regular interest thereon.'

"Our immediate problem involves the determination of whether in addition to the amount deducted from the deceased member's salary and reported to this office by his employer, some nine hundred dollars of additional annuity contributions as authorized by sub-section (C) of Section 145.23 R.C. must be forfeited by the widow in order to qualify for the survivor benefit." Section 145.43, Revised Code, provides in material part:

"(A) Should a member die subsequent to June 14, 1951 and before retirement, *his accumulated contributions and any payment he has made to restore previously forfeited service credit* as provided in section 145.31 of the Revised Code, shall be paid to such person or persons as he has designated in writing duly executed, signed by him, and filed with the public employees retirement board prior to his death. * * *

"A contributor may designate two or more persons as beneficiaries jointly to be paid the *accumulated account* in a lump sum. * * *"
(Emphasis added.)

Certain survivors are allowed to forfeit acceptance of payment of the accumulations referred to in the above section and to substitute survivors' benefits under Section 145.45, Revised Code, which reads in part:

"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 145.43 of the Revised Code, the surviving spouse if designated as a sole 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 described either in division (A) or division (B) of this section. * * * 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. * * * ” (Emphasis added.)

Paragraph (B) (1) following the above-quoted provision allows a surviving spouse, sixty-five years of age, monthly payments of fifty dollars per month, where the deceased member had completed at least five years of contributing service credit with at least one-fourth such year of credit within the two years prior to the date of death.

You have asked whether a widow who is past sixty-five years of age must forfeit “additional annuity contributions” made by the member, in order to qualify for the survivor benefit.

The statutes set out, *supra*, indicate that the designated beneficiary may receive either the *accumulated account* of the member, (which includes any payment made by the member to restore previously forfeited service credit), or certain survivors' benefits in the event the beneficiary meets the qualifications set out in Section 145.45, Revised Code.

The term “accumulated account” is not defined any where in the code, although the term “accumulated contributions” is defined in subparagraph (J) of Section 145.01, Revised Code, as meaning:

“* * * the sum of all amounts *deducted from the compensation of a member* and credited to his individual account in the Employees' savings fund together with regular interest thereon.” (Emphasis added.)

The “additional annuity contributions” referred to in your request are provided for in Section 145.23, sub-section (C), Revised Code, as follows:

“* * * Any member may deposit in the employees' savings fund, subject to rules and regulations established by the public employees retirement board, such amounts in multiples of one hundred dollars as such member desires and such member, at the time of superannuation or commuted retirement, shall receive in return therefor an annuity having a reserve equal to the amount deposited. * * * ”

It will be observed that these deposits are made *voluntarily* by the member, in order to complement the compulsory contributions deducted

from the member's compensation, the object being to build up a greater annuity upon retirement.

It is manifest that these voluntary deposits do not come within the definition of "accumulated contributions" as that term is defined in the public employes retirement law. This being the case, such deposits are not within the subject matter with respect to which the member may designate a beneficiary-recipient in the event of the member's death before retirement. The widow-beneficiary, by electing to take survivors' benefits as provided in Section 145.45, Revised Code, must forfeit the member's accumulated contributions, i.e., the sum in the employees' savings fund which is comprised of deductions from the member's compensation during his years of public employment. Inasmuch as the designation of beneficiary does not operate to pass to the beneficiary the member's voluntary deposits, the beneficiary has nothing in that respect which she might elect to forfeit in favor of receiving monthly survivor benefits.

There being no specific provision in the retirement law as to the disposition of a member's voluntary annuity deposits in the event of his death before retirement, it would appear that such deposits would pass to the members estate.

Accordingly I am of the opinion that :

1. Voluntary deposits in the employees' savings fund, made by a member of the public employes retirement system under authority of Section 145.23 (C), Revised Code, do not constitute a part of the "accumulated contributions" of the member as that term is defined in paragraph (J) of Section 145.01, Revised Code.

2. Where a member of the public employes retirement system dies before retirement, having on deposit with the system a sum of money deposited voluntarily, pursuant to Section 145.23 (C), Revised Code, such sum does not pass to the beneficiary designated by the member to receive the "accumulated contributions" of the member, pursuant to Section 145.43, Revised Code.

3. A beneficiary, in electing to take survivors' benefits under Section 145.45, Revised Code, must forfeit the accumulated account of the member, which is the sum deducted from the compensation of the member during his term of public employment, plus any payment made by the member to restore previously forfeited service credit; however, voluntary

deposits made by the member pursuant to Section 145.23 (C), Revised Code, for the purpose of enhancing his prospective annuity rights upon retirement, pass to the estate of the member in the event of the member's death before retirement.

Respectfully,

C. WILLIAM O'NEILL
Attorney General