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RETIREMENT SYSTEMS: PUBLIC EMPLOYEES—PAYMENTS UNDER §§145.33, 145.34, 145.36, 145.45 R.C.—WAIVER OF ALL OR ANY PORTION PERMISSIBLE—WAIVER MAY BE PERMANENT, FOR A PERIOD CERTAIN, PERIOD LIMITED BY CONTINGENCY.

SYLLABUS:

A member of the public employees retirement system or his survivor, who is entitled to payments of moneys under the provisions of Sections 145.33, 145.34, 145.36, and 145.45, Revised Code, may waive all or any portion of such payments, permanently, for a specified period of time, or for a period of time limited by a contingency.

Columbus, Ohio, May 9, 1958

Mr. Fred L. Schneider, Executive Secretary
Public Employees Retirement System of Ohio, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"On January 15, 1958, in response to our request, you issued your Opinion No. 1537. In that opinion you construed that portion of Section 145.321, Revised Code, which permitted any person eligible for a supplemental allowance, as provided by this section, to waive his right thereto.

"Subsection (C) of this section provides that:

"Any person who is eligible to receive, or becomes eligible to receive, an increased allowance under the provisions of this section may, at any time, waive his right thereto by filing a written notice of waiver with the public employees retirement board."

"In your opinion you point out that 'the purpose of the General Assembly in making this provision for waiver was to prevent the loss to certain persons entitled to this supplemental allowance of certain other rights they may have under federal legislation.' Upon the basis of this premise you concluded that a waiver under the provisions of this section, of the supplemental allowance provided by such section, may be of the entire allowance or any portion thereof, and that such waiver may relinquish the continuing right to such allowance for a specified period of time, a period of time limited by a contingency, or permanently; but that such waiver, within the limits of its terms is irrevocable.

"Section 145.33, Revised Code, provides for allowances upon superannuation retirement. Section 145.34, Revised Code, provides for commuted superannuation allowances. Section 145.36 makes provision for allowances upon disability retirement. Section 145.45 contains provisions relating to survivor benefits. None of these sections contain a provision for the waiver by any person entitled to any of such allowances.

"The widow of a deceased member, by him designated his sole beneficiary, has the option under Section 145.45 of selecting survivor benefits in lieu of accepting the payment of the accumulated account of the deceased member.

"We have at this time for our attention the case of such a widow who would, upon reaching age 65, be eligible for a survivor's benefit of \$75.00 per month for life, or until remarriage. Such widow advises us, however, that in order to receive her

Veteran's Pension her other income cannot exceed \$70.00 per month. She raised the question as to whether her survivor's benefit can be reduced from \$75.00 to \$70.00 per month.

"Your Opinion No. 1537 deals specifically with the statutory right to waive contained in Section 145.321, R. C., and is not, therefore, applicable to the present situation. We are, at this time, requesting your opinion as to whether persons entitled to allowance under the provisions of Sections 145.33, 145.34, 145.36 and 145.45, R. C., are entitled to waive any portion of the allowance to which they would be entitled under any of these sections. If your answer is in the affirmative we wish to be advised as to the required terms and conditions of such waivers."

As a general rule, a person may waive all personal rights or privileges to which he is individually entitled, whether secured by contract, conferred by statute, or guaranteed by the constitution. 40 Ohio Jurisprudence, 1235. Section 145.321 (C), Revised Code, merely recognizes a right which exists independently of statute and prescribes the manner of exercising that right.

It is my opinion that a member of the public employees retirement system or a member's survivor can waive any portion or all of any moneys to which he may be entitled under the terms of Sections 145.33, 145.34, 145.36 and 145.45, Revised Code. Such waiver may be permanent, or for a specified period of time, or for a period of time limited by a contingency. Opinion No. 1537, Opinions of the Attorney General for 1958, p. 12.

A member who makes such a waiver may wish to check the federal income tax implications of waiving that portion of any moneys to which he has a right and which is attributable to his own contributions.

As to the terms and conditions of such waivers, I believe that my discussion of that subject in Opinion No. 1537, *supra*, to which you refer, will answer any general questions you may have in mind. I think that your office can and should require that waivers be made in writing.

It is my opinion and you are advised that a member of the public employees retirement system or his survivor, who is entitled to payments of moneys under the provisions of Sections 145.33, 145.34, 145.36, and 145.45, Revised Code, may waive all or any portion of such payments, permanently, for a specified period of time, or for a period of time limited by a contingency.

Respectfully,
WILLIAM SAXBE
Attorney General