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proposed by the Indiana County and Township Officials' Association, would be an improper expenditure of public funds.

(2) It would not be improper for counties or townships to purchase books or manuals prepared, printed and published by the association if the statutory requirements relating to county and township supplies are followed and complied with.

OFFICIAL OPINION NO. 15
February 21, 1958

Mr. Norval L. Martin
Executive Secretary
Indiana State Teachers' Retirement Fund
145 W. Washington Street
Indianapolis, Indiana

Dear Mr. Martin:

Your letter, requesting an Official Opinion, has been received and reads as follows:

"Mrs. Virginia Whitson Bills, a member of the Indiana State Teachers' Retirement Fund, died on July 31, 1957. On September 23, 1957, the surviving husband of Mrs. Bills filed application for the spouse option benefit from Mrs. Bills' Retirement account in lieu of the cash settlement.

"Mr. Bills died on October 7, 1957. Death occurred before his application for the spouse option benefit had been processed and presented to our board of trustees. It is established procedure in our office to present all claims to the board of trustees before making settlement.

"Following is copy of a letter which this office received from Duwe Butler, Jr., Attorney for the administrator for the estate of Mr. Bills:

"'On July 31, 1957 Mrs. Virginia Whitson Bills, a teacher and a member of your Retirement Fund, died intestate in Marion County, Indiana. She left as her designated beneficiary
Dophilia J. Bills. On September 23, 1957, Dolphia J. Bills submitted an application for the spouse option of your program. That application would have been determined by the Board at your October meeting. However, Mr. Bills died on October 7, 1957, and prior to the time your Board either approved or denied this application. Therefore, on behalf of the Administrator of his Estate, it is our desire that this application be voided and that Mr. Bills’ Estate be credited with a lump sum settlement of benefits accrued by Virginia Whitson Bills.’

“Is the account of Mrs. Virginia Whitson Bills bound for settlement under the spouse option provision? We would appreciate your official opinion on this question.”

With the extension of social security to teachers in the Indiana school systems, the Teachers’ Retirement Fund became subject to the provisions of the act known as the Indiana Public Employees’ Social Security Integration and Supplemental Retirement Benefits Act (Acts of 1955, Ch. 329, as amended by Acts of 1957, Ch. 311, as found in Burns’ (1957 Supp.), Sections 60-1911 to 60-1940). There is no express statutory provision in that act covering the situation in question here. However, in Section 12 of the 1955 Act, as found in Burns’ (1957 Supp.), Section 60-1923, the following provision is found:

“* * * Each such retirement system shall nevertheless continue to be a separate retirement system and its affairs shall continue to be administered by the board which has previously administered the affairs of such system, subject to the same terms and conditions as heretofore except insofar as the same are inconsistent with the terms and conditions of this act. * * *”

One of the terms and conditions to which the Teachers’ Retirement Fund was subject prior to the enactment of the supplemental benefits act above is found in Acts of 1915, Ch. 182, Sec. 12, as found in Burns’ (1948 Repl.), Section 28-4509, which provides as follows:
“The board of trustees of the Indiana state teachers’ retirement fund shall receive and pass upon all applications for annuities or benefits under this act. It shall have power to summon witnesses, order medical examinations, select or approve physicians for such examinations, and conduct all reasonable investigations to enable it to determine intelligently the justice of any claim submitted.” (Our emphasis)

Inasmuch as the above quoted provision is not inconsistent with the supplemental benefits act, it continues in full force and effect. Therefore no application for benefits would be final until both received and passed upon by the board of trustees of the Indiana State Teachers’ Retirement Fund. Your letter states that it is the established practice in your office to present all claims to the board of trustees before making settlement. In so doing, the board is following the correct procedure.

In the situation at hand, Dolphia J. Bills was the beneficiary designated by the deceased member of the fund. Following the death of the member, the beneficiary submitted his application for the spouse option benefit. The application as submitted did not have the “Certificate of Employing Official” filled in at the time it was submitted and therefore may not have been complete. At any rate, before the application had been processed and presented to the board for its approval or disapproval, the beneficiary died. The administrator of the beneficiary, who was entitled to these proceeds as a part of the estate, immediately requested that the application be voided and that the estate be credited with the lump sum settlement of benefits accrued by the member.

The revocation of the election of benefits under the supplemental benefits act should be treated by the same terms and conditions as a similar situation would be treated under the Teachers’ Retirement Fund Acts. In other cases before the Teachers’ Retirement Fund board in the past, it has been determined that a retired teacher could cancel a request for joint-survivor benefits even after she had been paid benefits on the basis of that option which she had selected previously. (See 1955 O. A. G., page 19, No. 5.) Also in 1957 O. A. G., page 15, No. 5, it was determined that a beneficiary who had
been named by his spouse as a co-annuitant had the right to take a cash settlement of the accumulated contributions of the teacher in lieu of the co-annuitant benefits. If a beneficiary is permitted to change the election of benefits made for him by the teacher, he should certainly be permitted to change the election he has made for himself. Therefore it would seem a beneficiary has the right to cancel an election of benefits before it had been finally passed upon by the board. This right would pass to the administrator of his estate and, if timely exercised, would be proper. There is nothing in the statutes prohibiting the beneficiary from withdrawing his application, and since this right of withdrawal is given a retired teacher, it should be extended likewise to the beneficiary in this instance. Inasmuch as the application for spouse option had not been processed and approved by the board of trustees, it would seem proper to permit it to be withdrawn by the applicant. The administrator of the applicant's estate could likewise request the withdrawal of the application prior to the time it was presented to the board and approved.

It is, therefore, my opinion that the application in question was not completed since it had not been passed upon by the board of trustees. It should be considered as properly withdrawn by the request of the administrator and the lump sum settlement of the contributions accumulated by Mrs. Virginia Whitson Bills should be paid to the estate of her designated beneficiary upon administrative approval by the board of trustees.

OFFICIAL OPINION NO. 16
February 26, 1958

Hon. Joda G. Newsom, Chairman
State Board of Tax Commissioners
404 State House
Indianapolis 4, Indiana

Dear Mr. Newsom:

This is in response to your request of January 23, 1958, for an Official Opinion, which reads as follows:

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