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OFFICIAL OPINION NO. 5

March 28, 1955

Mr. B. W. Johnson, Executive Secretary
Indiana State Teachers' Retirement Fund
336 State House
Indianapolis, Indiana

Dear Mr. Johnson:

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

"We request your official opinion in regards to the following case:

"Blanche L. Rickman, 82 years of age and a retired teacher since 1941, named a Joint-Survivor during the ninety [90] day period under Sec. E, Rule #25 of the Regular Adopted Rules of The Indiana State Teachers' Retirement Fund Board.

"The survivorship reduction became effective 12-10-54. Her annuity was reduced from \$146.02 to \$40.04 per month due to the Co-survivor being 40 years of age.

"The teacher asked for the information concerning the amount she would receive under such a Co-survivorship and she was given all the facts, including the amount she would draw under the plan before she filed for the same.

"She now claims she did not understand what she was doing and asks that the Board cancel her Co-survivorship and restore her annuity to \$146.02 per month as though she had not named a Co-survivor.

"Does the Board have this authority?"

The Acts of 1953, Ch. 149, Sec. 2(i), as found in Burns' Indiana Statutes (1948 Repl., 1953 Supp.), Section 28-4511 (i) provides as follows:

"* * * Such teacher may elect to accept annuities less than otherwise receivable under this act in consideration of annuity protection for not more than one [1] dependent as shall be recognized by the board, or

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greater than otherwise receivable in consideration of a waiver of death benefit by the teacher: Provided, That any teacher who shall have completed twenty [20] or more years of service may elect to provide annuity survivor benefits for such dependent in case of the death of said teacher during the remainder of his period of active service, based upon the annuity that would be available had such teacher retired at the time of his death adjusted to the actuarial equivalency of such annuity, taking into consideration the ages of the teacher and the dependent. The board shall make necessary rules and regulations for the proper administration of this provision: Provided, That the first annuity payment after retirement of a teacher shall be made on a quarter-year basis.”

Pursuant to the above statute, said retirement board on June 18, 1953 adopted amended Rule No. 25 which is found in 1954 Additions and Revisions to Rules and Regulations, page 105 *et seq.* On page 107 thereof is found Section E of said Rule which provides as follows:

“Persons receiving, or entitled to receive, annuity under the terms of the Teachers’ Retirement Fund law on July 10, 1953, or from a date prior thereto, shall be privileged to name a dependent [as recognized by the board] as annuity-survivor as provided for in the law. Any such designation must be made by duly verified petition filed in the retirement fund office, in such form as the board shall prescribe, by the person receiving or entitled to receive the annuity, not later than 90 days from the time notice is sent to such person by the retirement fund board, of the terms and conditions applying to such election of an annuity survivorship; and such designation of annuity-survivor shall not be effective until after the expiration of a period of 9 months from the filing of such designation by the annuitant; Provided, that until the effective date of such annuity survivorship option, the annuity of said retired member shall continue to be payable at the rate that would have prevailed without such option; and Provided further; That in the event of the death of the dependent designated to

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be annuity-survivor within the period of 9 months prior to the effective date of said option, the designation shall be deemed to have been cancelled, and the member's annuity shall remain as though such option had not been elected.

“The amount of the optional annuity to be payable to any annuitant from and after the effective date of a designation of annuity-survivor shall be based upon the ages of the annuitant and the designated annuity-survivor at the said effective date, and shall be determined by or under the supervision of the Executive Secretary of the fund, in accordance with tables adopted by the board upon recommendation of the actuary; and no death benefit shall be payable in the account of any annuitant whose designation of an annuity-survivor becomes effective under this rule, other than the continuation of the optional form of annuity to the designated annuity-survivor, if living.”

Since the above rule does not prohibit a withdrawal of her prior request for Co-survivorship, and since there has been nothing transpire that would as a matter of equity interfere with the restoration of the payment of her annuities, to the same that they were prior to the time of such election, I am of the opinion she may cancel such election of joint survivor.

OFFICIAL OPINION NO. 6

April 12, 1955

Mr. R. R. Wickersham
State Examiner
State Board of Accounts
304 State House
Indianapolis, Indiana

Dear Mr. Wickersham:

This is in reply to your letter of March 8, 1955, in which you inquire as to the following:

“Your opinion regarding the matter of Workmen's Compensation Insurance for Volunteer Firemen as set out in the following is requested: