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OFFICIAL OPINION NO. 25

March 18, 1952.

Mr. Robert B. Hougham, Executive Secretary,
Indiana State Teachers' Retirement Fund,
336 State House,
Indianapolis 4, Indiana.

Dear Mr. Hougham:

Your letter of February 5, 1952, has been received and reads as follows:

"We request your opinion as to the eligibility of Keith Simon to receive an annuity from the Indiana State Teachers' Retirement Fund, claiming as annuity-survivor of Bonnie L. Thomas, a member of the fund who died May 25, 1951.

"(1) Miss Thomas filed a transfer of membership April 26, 1951, from the 1947 law to the 1951 law. On that transfer the county school superintendent of Allen County certified that she was then 'legally qualified and regularly employed' as a teacher in the schools of Allen County.

"(2) However, on May 28, 1951 (three days after her death) there was filed in the offices of the Retirement Fund an annuity application signed by Miss Thomas before a notary May 14, 1951. In this annuity application the same county superintendent of Allen County has certified that 'service and compensation of Bonnie L. Thomas for such service as teacher ceased on the 26th day of January 1951.'

"Upon inquiry by the retirement office, the said county superintendent has written us that the last day of teaching was January 26, 1951; and that her school board then granted her leave of absence because of illness, 'for the duration of her illness or the remainder of the 1950-51 school year.'

"(3) The designation of Keith Simon, her nephew, as annuity-survivor was dated May 19, 1951, and filed with the retirement fund May 21, 1951 and was in the following language (not witnessed or verified):

“ ‘Martinsville, Indiana

“ ‘May 19, 1951

“ ‘To Indiana State Teachers’ Retirement Fund

“ ‘I hereby name Keith Simon of Lagro, Florida as co-annuitant for my Indiana Teachers’ retirement.

“ ‘(Signed) Bonnie L. Thomas

“ ‘Identification or birth certificate will follow.

“ ‘Retirement Fund No. 25457’

“ (4) There was also filed with the fund May 16, 1951, a designation of Keith Simon as beneficiary ‘for receipt of any payment to which her estate would otherwise be entitled.’ This was upon the form provided by the fund, signed by Miss Thomas and dated and witnessed May 14, 1951.

“Provision was made in the 1947 law, to which Miss Thomas belonged, for naming an annuity-survivor; but the published rule governing such procedure provides that the survivor must be named at least 9 months before the annuity accrual date. This would preclude Mr. Simon from receiving an annuity under the 1947 law.

“Under the 1951 law, this 9 month provision has been waived by published rule, up to June 30, 1952.

“The question before us is whether Miss Thomas made a legal transfer of membership, and legal designation of annuity-survivor, at a time when she was not a regularly employed teacher, but was on leave of absence from her school duties.

“Your opinion is requested upon this, and upon the liability of the fund for payment of annuity to said Keith Simon.

“While these matters have been pending, the fund recently received a letter from one J. C. Thomas of Afton, Oklahoma, stating that he is one of the heirs of the late Miss Thomas, and asking as to disposition of her ‘estate’ in the fund. She had paid to the retirement

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fund \$3651.96, and had designated her 'estate' as beneficiary December 11, 1948."

The numbers on the various filed elections have been placed in the above quotation by me for reference to that particular election.

1. Section 28-4511, Burns' 1951 Supplement, clause (m), reads in part as follows:

"(m) Any teacher may be given a leave of absence for study, professional improvement, and temporary disability, not exceeding one-seventh (1/7) of the years of service claimed for retirement. In such instances and for exchange teaching, military, naval, or allied service, and other educational employment as defined *and approved in each case by the board* such teacher shall be regarded as a teacher and entitled to the benefits of this act, provided that for or during such an absence he shall pay or continue to pay into such fund the amount of assessment payable by such teacher as provided by this act: * * *"
(Our emphasis.)

With reference to the attested transfer of membership from the 1947 to the 1951 law referred to in specification 1, *supra*, I am of the opinion said election was ineffective in that this teacher had not been granted a leave of absence by the Retirement Board, as specified in the above quoted part of the statute. She was therefore not a "regularly employed teacher" in the public schools at the time of making such election, as required for membership in the 1951 fund under the specific provisions of Sec. 28-4511, Burns' 1951 Supplement, clause (a).

"(a) The members and beneficiaries of this fund shall include any legally qualified and regularly employed teacher, teacher-clerk, supervising principal, principal, supervisor, superintendent of schools, person in charge of any special department of instruction or training, or any other teacher or instructor legally qualified and regularly employed as such in any of the public schools of this state * * *."

2. The annuity application of this teacher was filed with the Indiana State Teachers' Retirement Board on May 28,

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1951, which was three days after her death. Since it is necessary that an election be filed with the board before it is effective, such an election cannot be made by a deceased person. It therefore was ineffective.

3. The designation of Keith Simon as an annuity-survivor was dated May 19, 1951, filed with the Retirement Board May 21, 1951, and the teacher died May 25, 1951. As shown in answer number 1, *supra*, this teacher was not a member of the 1951 fund. Since under the board rules, except as to members of the 1951 fund, a designation of an annuity-survivor must be named at least nine (9) months before the annuity accrual date. Therefore, this designation was ineffective.

4. As shown under number 4, *supra*, a written designation of Keith Simon as beneficiary "for receipt of any payment to which her estate would otherwise be entitled" was filed with the fund on May 16, 1951. This was on the proper form and witnessed and dated May 14, 1951. Since the naming of a beneficiary is authorized by the 1947 statute, as well as most of the retirement fund statutes, without a requirement of being filed within a prescribed period of time, this designation of beneficiary is valid and would, in my opinion, control the disposition of the amount due this teacher from the retirement fund. It would supersede the previous designation of her "estate" as beneficiary filed with your board on December 27, 1948.

OFFICIAL OPINION NO. 26

March 20, 1952.

Mr. Robert B. Hougham, Executive Secretary,
Indiana State Teachers' Retirement Fund,
336 State House,
Indianapolis 4, Indiana.

Dear Mr. Hougham:

Your letter of February 8, 1952, has been received and reads as follows:

"Section 2, subsection (i), Chapter 142 of the Acts of 1951, amending the Indiana state teachers' retire-