

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.

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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-

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ment fund law, provides for the election of an annuity-survivorship option, to be effective under two conditions:

“(a) In the event of death of the member after he has retired and is receiving pension;

“(b) In the event of death of the member while in active teaching service, before retirement, after having had twenty-five years of service.

“Your opinion is requested as to whether or not these are separable options, of which either one or both may be selected by the member.

“(a) Does a single declaration of election under the 1951 law cover both contingencies?

“(b) May a member select either option to the exclusion of the other; and if so, would such election defeat a claim for survivorship annuity under the other option?”

Section 28-4511, Burns' 1951 Supplement, clause (i) provides in part as follows:

“(i) Any person coming under the provisions of this act who shall have met the regular payments and obligations of this act, and who for any cause ceases to be in the employ of the public schools of the state or any state institution in which service credit is granted herein shall be entitled to a basic annuity as provided in sub-section (h) hereof in addition to such annuity as may have accrued to such teacher from assessments and interest accumulations on his account prior to retirement, as well as from additional payments to the fund hereby authorized to be made by such teacher or his employer compounded on a three per cent (3%) basis for the purpose of providing an annuity for such teacher and such dependent as may be recognized by the board, which additional annuity shall be provided by resolution of the board which shall also determine the extent to which the privileges of the additional annuity fund may be enjoyed by the members thereof.

Annuity payments shall be payable monthly terminating with the last payment prorated to the death of the annuitant. 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 greater than otherwise receivable in consideration of a waiver of death benefit by the teacher; Provided, That any teacher who shall have completed twenty-five (25) 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: \* \* \*."

Prior to the 1951 retirement fund statute, there was a provision for a teacher exercising an option for an annuity survivorship, in the event of the death of the teacher after he had retired and was receiving pension. The provision in the 1951 retirement statute that a teacher with twenty-five years of service, while in active teaching service, could make an annuity survivorship election, first appeared in the 1951 statute and is of course available only for those members of the 1951 retirement fund. This is an additional benefit to the teacher of considerable importance and in most instances is utilized for the benefit of the teacher's surviving husband or wife having an annuity in the event of the death of the teacher in active service who has twenty-five years of teaching service to her credit in the fund.

It is generally the law statutory provisions of a beneficial nature are, if possible, construed in favor of the acceptance by the person of such benefits. It is analogous to the acceptance of gifts and it has been held that such acceptance is presumed until the presumption is removed. (Grant Trust, etc., Co. v. Tucker (1912), 49 Ind. App. 345, 354, 96 N. E. 487.)

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An examination of Section 28-4511, Burns' 1951 Supplement, shows that throughout this section of the statute, the Retirement Board is repeatedly given authority to make rules and regulations facilitating the carrying out of the intents and purposes of the statute and it is therefore considered advisable that the board promulgate rules and regulations regarding the procedure for making an election by a teacher for the above benefits.

In the absence of such regulations, and in answer to your first question, I am of the opinion, since both of the provisions are beneficial to the teacher, that a single declaration of election under the 1951 law would cover an election of an annuity survivorship in the event of the death of a teacher after retirement and an annuity survivorship election in the event of the death of a teacher while in active teaching service.

In answer to your second question, the teacher would certainly have the right to select either option to the exclusion of the other, but such an election of one of the benefits would, in my opinion, be required to be specific and to exclude consideration of the other beneficial survivorship option.

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### OFFICIAL OPINION NO. 27

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, reads as follows:

"The State Teachers' Retirement Fund has before it the case of a teacher who, on January 26, 1951, filed an election under Acts 1949, Chapter 130, Section 2, subsection i, establishing a joint-survivorship to be effective in event of death after his retirement.

"He, thereafter, on April 4, 1951, filed a transfer of membership to the new 1951 amendments (Acts