

OFFICIAL OPINION NO. 71

July 25, 1945.

Hon. Robert B. Hougham, Executive Secretary,
Indiana State Teachers' Retirement Fund Board,
334 State House,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of June 22, 1945, received requesting an official opinion on the following questions:

"1. Is the Retirement Fund Board, under the 1939 law, authorized to make a distribution of the deceased teacher's estate among a number of named beneficiaries, where a teacher on May 30, 1945, designated each named beneficiary?

"2. Does the permission to name a beneficiary apply to members of the retirement fund who remained in contractual relationship under the 1921 law, which had stated that the amount due should be paid to the estate of the teacher?"

1. In answer to your first question, I wish to advise that prior to the 1939 amendment of the teachers' pension statute death benefits were payable to the estate of the deceased teacher who had not been retired on an annuity. This is provided for by Section 28-4511 Burns' 1933, same being Section 8, Chapter 256, Acts 1921.

Section 28-4511 (e) Burns' 1943 Supplement, Section 1, Chapter 28, Acts 1939, provides as follows:

"Death before Retirement—Benefit. In the event of the death of any teacher who is a member under the provisions of this act, before such teacher has retired on an annuity, then and in that event the estate of the deceased teacher (or a beneficiary thereof designated to the board in writing by said teacher) shall be entitled to a sum chargeable to the annuity savings account equal to the contributions of the teacher with interest thereon compounded annually at four (4) per cent, if application therefor

be made within three (3) years after the death of such teacher, but not otherwise."

Where the word "Beneficiary" is used in a statute it has been held the singular includes the plural. In the case of *Smith v. Commissioner of Internal Revenue* (1932), 52 F. (2d) 59, the court was required to determine the deficiency income taxes due under the Federal statute. On page 58 of the opinion the court said:

"It would seem that Congress did not intend, by the use of the term 'beneficiary' in section 219 (g) only a beneficiary having a present vested interest, but intended to include within that term a beneficiary or beneficiaries having contingent interests as well as those having present or vested ones."

The converse of this rule is also true. See 5 Words and Phrases, Supp., p. 30, 59 C. J. 987.

I am therefore of the opinion that although Section 28-4511 Burns' 1943 Supplement, *supra*, uses the word "beneficiary" the same would be construed to mean the plural as well as the singular of that term, and that therefore the Indiana State Teachers' Pension Fund Board could make a distribution of the funds due a deceased teacher among a number of beneficiaries designated by such teacher under the 1939 law, providing such teacher was a member of such Fund under such 1939 law.

2. In answer to your second question, I wish to advise Section 28-4511 (n), same being Section 1, Chapter 28, Acts 1939, provides as follows:

"Prior Right—Election. Any teacher whose contractual rights had vested in the fund prior to July 1, 1939, may elect prior to December 31, 1942, to accept the benefits of this act as amended in 1937 and thereafter. In case any such teacher shall not elect to accept such benefits conferred by the said amendatory acts he or she shall continue in prior contractual rights in the fund."

The last quoted statute has been amended by Chapter 328, Section 3 (n) of the Acts of 1945, to read as follows:

“(n) Any teacher whose contractual rights had vested in the fund prior to July 1, 1945, may elect prior to December 31, 1946, to accept the benefits of this act as amended in 1945 and thereafter. In case any such teacher shall not elect to accept such benefits conferred by the said amendatory acts he shall continue in prior contractual rights in the fund. Affidavit to evidence eligibility to receive annuity under this act may be required by the Board from any or all annuitants not more often than once each year.”

The 1945 statute contained an emergency clause and was approved by the Governor on March 9, 1945, and under Section 5 of said Act became effective on July 1, 1945.

An examination of the entire 1939 teachers' retirement statute shows that teachers are required to incur additional obligations and to make payments of arrearages in electing to come under the 1939 statute. The same is equally true of the amendment of said statute in 1945. Each of said Acts, as hereinbefore pointed out, only applies to those teachers electing to come under the provisions of said Acts, and the rights and liabilities of teachers who were members of such pension fund under previous statutes are governed by the provisions of such previous statutes. As hereinbefore pointed out, teachers under said pension statutes prior to 1939 had no right to designate a beneficiary and any funds coming to them on their death were payable to their estate.

Therefore in answer to your second question I am of the opinion that teachers who remain members of such teachers' fund by contractual relationship under the 1921 law, and who have not elected to become members of said fund under the 1939 or the 1945 law, may not name beneficiaries to receive any money due them on their death, but that same must be paid under the prior law to such teacher's estate.