ACCOUNTS, STATE BOARD OF: Firemen's pension. Beneficiaries; sister as beneficiary; vested interest in pension.

March 8, 1938.

Hon. William P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

Your letter of March 3 raises a question relative to the payment of a pension by a city of the second class to the sister of a deceased fireman, which payment is to be made from a firemen's pension fund.

The facts which you set out in your letter, which are material to this inquiry, are as follows:

A member of a firemen's pension fund of a city of the second class died during December, 1932, leaving no widow or parents. A sister, whom he supported, was shortly afterwards granted a pension as a dependent, under the provisions of chapter 16 of the Acts of 1925. The firemen in question never married, and for years, while in active service, made regular contributions to the firemen's pension fund. Recently, this city of the second class, of which you speak, pursuant to the provisions of chapter 31 of the Acts of 1937, elected to be governed as to its firemen's pension fund by the provisions of said chapter 31. I understand that the proceedings relative to the election to come within the scope of said chapter 31 were regular in every way.

The exact question which you propound in connection with the above recited facts is as follows:

"Does a dependent sister, who has been receiving a pension under the provisions of the Firemen's Pension Fund Act of 1925 cease to be a beneficiary to the firemen's pension fund by reason of the taking effect of the 1937 Firemen's Pension Fund Act and the election of the city to come under its provisions?"

Section 2 of Chapter 16 of the Acts of 1925, in providing who should be beneficiaries, named the widow, children and dependent parents, who were to receive in the event there were no widow or children. This Section then says:
“That if there be no widow, and no child or children, and no dependent father or mother, but brothers and sisters who were mainly dependent upon such deceased member of the firemen force, then such pension shall be paid to them.”

Chapter 31 of the Acts of 1937, by Section 11, provided:

“The sum which shall be paid to permanently disabled members and to the widows, orphans, mothers and fathers of the deceased members, shall be as follows: * * *”

You will notice that by comparing the quoted portions of the 1925 Act with the 1937 Act, that brothers and sisters were omitted from the 1937 Act as potential beneficiaries. Therefore, then, the dependent sister, if the 1937 Act is to control, would not be entitled to a continuance of the pension unless the payment of such pension to her is a vested right in her which cannot be taken away by legislation. In other words, if this pension to such dependent sister is a contract, then the question is whether or not subsequent legislation would be violative of the prohibition against the abrogation of contracts.

As far as I can determine, the Indiana courts have never spoken as to whether or not a pension is a vested right; however, the courts of fifteen other jurisdictions have decided the question innumerable times. The rule of the law as laid down by those other jurisdictions is in substance as follows:

“A pension granted by the public authorities is not a contractual obligation, but a gratuitous allowance, in the continuance of which the pensioner has no vested right; and that a pension is accordingly terminable at the will of the grantor.”

People ex. rel., Donovan v. Retirement Board, etc., 326 Illinois, 579 158 N.B. 220.

In view of this well-settled rule, it is my opinion, then, that the dependent sister had no vested right in this pension paid to her pursuant to Section 2 of Chapter 16 of the Acts of 1925, and since she had no vested right, the Legislature of 1937 and the city, by ordinance subsequent to the passage of the 1937 Act, could terminate such gratuity. By Act of the legislature and by the proceedings of the city council electing to come
within the provisions of the 1937 Act, the sister was excluded from the class to be known as the beneficiary.

Thus, then, to answer your question specifically, it is my opinion that the dependent sister of whom you spoke ceased to be a beneficiary to the firemen's pension fund by reason of the 1937 Firemen’s Pension Fund Act and the election of the city to come under its provisions.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Garnishee law—Application to conditional sales contracts.

March 10, 1938.

Hon. Ross H. Wallace,
Director Department of Financial Institutions,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of February 25, 1938 in which you submit the following question:

"Section 20 of the Uniform Conditional Sales Act (Acts of 1935, chap. 182, p. 918) indicates that holders of conditional sales contracts may, upon default, retake and resell personal property secured thereby, and secure deficiency judgment against the conditional purchasers. The Garnishment law (as amended by chapter 84, Acts 1937, p. 440) specifically excepts garnishment execution "upon any judgment upon any contract of the sale of personal property unless the title to said property passes at the time of the sale" (sec. 5, p. 443) except where denial of the remedy is unconstitutional.

"Are we correct in our assumption that garnishee action is prohibited covering deficiency judgments resulting from conditional sales contracts. An official opinion on this subject would be appreciated."

It is my opinion that the language of Section 5, Chapter 84 of the Acts of the General Assembly for 1937 as quoted requires that your question be answered in the affirmative.