

JUNE 20, 1956

MR. GEORGE M. BORDEN, *Secretary*  
*Public Employees' Retirement System*  
48 West State Street  
Trenton, New Jersey

## MEMORANDUM OPINION—P-21

DEAR MR. BORDEN:

You have requested our opinion as to whether under the provisions of N.J.S.A. 43:15A-41c a member may designate a corporation or a charitable organization as a designee. That section provides:

"Upon the receipt of proper proof of the death of a member in service on account of which no accidental death benefit is payable under sections 49 there shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate:

(1) His accumulated deductions at the time of death together with regular interest; and

(2) An amount equal to 1½ times the compensation received by the member in the last year of creditable service."

It is clear from the foregoing language that the enactment contemplates as designees living persons only. If the designee is not living the benefit is to be paid to the executor or administrator of the member's estate, and accordingly, neither a corporation nor a charitable organization can be designated.

Under the provisions of the former legislation, R.S. 43:14-1 et seq, somewhat similar language may be found in Section 43:14-29:

" \* \* \* If a contributor dies before retirement his accumulated deductions shall be paid to his estate or to such person as he shall have nominated by written designation duly executed and filed with the board of trustees . . ."

It should be observed that Section 43:14-29, unlike the present section, does not specify that the designee be living. Accordingly, the language employed in the present section, N.J.S.A. 43:15A-41c, may be viewed in the light of that employed in the former section. In your request for opinion, you state that under the former State Employees' Retirement System you permitted the designation of corporations and charitable organizations. It may well be that the Legislature in enacting the present section had in mind the administrative difficulties inherent in permitting the designation of corporations and charitable organizations. Particularly, they may have had in mind the considerable time required to be expended in checking the propriety of the various legal documents pertaining to the status of such corporations and charitable organizations.

Reiterating, it is our opinion that under N.J.S.A. 43:15A-41c neither a corporation nor a charitable organization can be designated.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: LAWRENCE E. STERN  
*Deputy Attorney General*

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JUNE 28, 1956

THE HONORABLE JOHN W. TRAMBURG, *Commissioner*  
*Department Institutions and Agencies*  
State Office Building  
Trenton, New Jersey

MEMORANDUM OPINION—P-22

DEAR COMMISSIONER TRAMBURG:

You have requested a legal opinion concerning the authority of the State Board of Child Welfare to utilize funds of a ward committed to its guardianship for reimbursement to the public treasury of tax monies expended for support and maintenance of said ward. It appears in the particular situation you describe that the ward had no funds when the expenditures for care and maintenance were made but did subsequently acquire funds at a time when expenditures were no longer being made.

It is our opinion and we advise that such reimbursement of public monies can be made for the reasons and in the manner which we outline herein.

We have examined R.S. 30:4C-22 (Chap. 138, P.L. 1951, sec. 22) which provides that the State Board shall have authority "to apply funds other than earnings of any ward against expenditures for the maintenance of such ward." This is clear legislative intent that a ward of the State Board of Child Welfare if possessed of sufficient funds shall be obliged to reimburse the public treasury for monies expended in its behalf for maintenance, education and support.

It seems basic in the legislation of this jurisdiction dealing with public welfare that this type of reimbursement shall be had wherever possible. (See R.S. 44:7-14 on grants of assistance to aged persons; R.S. 30:4-66 and 30:4-74, maintenance of mental incompetents in State and county institutions.)

A guardian of a minor, other than an agency of the State, such as the State Board of Child Welfare, is obliged to make application to a court of competent jurisdiction for leave to utilize income or principal from the estate of a minor for support and education of the ward. (See N.J.S. 3A:20.1, et seq.) This requirement seems to be dispensed with in the statute under review for the legislature has empowered the board "to apply funds\*\*\*\*of any ward against expenditures for the maintenance of such ward."

R.S. 30:4C-22 became effective on May 31, 1951 and has no retroactive application prior to its effective date. Our courts have spoken on the subject matter of retrospective legislation in a number of cases and most recently in *Lascari v. Bd. of Education of Lodi*, 36 N.J. Super 426 (App. Div. 1955), where it was said: