

The key section of the law is section 3 thereof which reads as follows:

"No person shall destroy, sell or otherwise dispose of any public record, archives or printed public documents which are under his control or in his care or custody, whether or not they are in current use, without first having advised the Bureau of Archives and History in the Department of Education of their nature, and obtained the written consent of that bureau; which consent may be given by said bureau only if the same is in conformance with regulations governing the granting thereof which shall be made and promulgated by the State Records Committee established by section six of this act."

The scope of the quoted section and hence of the succeeding sections of the Law, which merely amplify it, is determined by the definition of "public records" contained in section 2. The latter section defines "public records" to include records received by "any * * * authority of the State or of any political subdivision thereof * * * in connection with the transaction of public business * * *." (Emphasis added.)

When used together with other words denoting state agencies or instrumentalities, the word "authority" refers to a semi-public corporation such as the New Jersey Turnpike Authority (N.J.S.A. 27:23-3) created by the State to act as an instrumentality thereof to carry out a public purpose.

While the New Jersey Turnpike Authority is an independent entity for some purposes, *N.J. Turnpike Authority v. Parsons*, 3 N.J. 235 (1949), nevertheless it is a public authority for the purposes of the Public Records Law.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: MURRY BROCHIN
Deputy Attorney General

APRIL 18, 1960

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton 25, New Jersey

MEMORANDUM OPINION—P-7

DEAR MR. KERVICK:

You have requested our advice concerning an application for accidental death benefits filed with the Board of Trustees of the Police and Firemen's Retirement System. N.J.S.A. 43:16A-1 et seq. An accidental death pension has been previously granted the widow of a member but was revoked in accordance with N.J.S.A. 43:16A-10(2)(b) upon the widow's remarriage. Now a surviving child of the deceased member seeks continued pension benefits, presumably in accordance with a later clause of that same section which reads:

"If there be such children and no widow, or if the widow dies, the pension which the widow would have received had she survived shall be paid to those children who have not reached eighteen years of age * * *."

N.J.S.A. 43:16A-10 provides for accidental death benefits which consist of "the member's aggregate contributions" payable to a designated beneficiary and a \$1,500 a year annuity payable to the member's widow until death or remarriage, and if there be children, such widow receives the annuity "for the use of herself and such children." Thereafter follows the statutory language under which this surviving child makes application for an annuity.

The question to be determined is whether the Legislature merely intended to extend benefits under this law to children of a deceased member until their mother's remarriage or whether it intended to provide such benefits absolutely to surviving children during the period of their statutory dependency.

The law expressly authorizes payments to children of a member if they survive and are not yet eighteen years of age: "[i]f there be * * * no widow." In New Jersey and elsewhere it has been held that the "familiar, well fixed and certain" meaning of widow, both "popularly and legally," is a woman who has lost her husband through death and *remains unmarried*. *Montclair Trust Co. v. Reynolds*, 141 N.J. Eq. 276, 279 (Chan. 1948); *Crocheron v. Fleming*, 74 N.J. Eq. 567, 568 (Chan. 1908); 45 *Words and Phrases, Widows*; Cf. *Hanson v. Brown and Stewart Co.*, 90 N.J.L. 445, 447 (Sup. Ct. 1917). Since a child under the age of 18 does exist and there is no longer any widow, by reason of her remarriage, the Board should allow payments to the child in accordance with the legislative mandate to pay benefits during the period of statutory dependency. N.J.S.A. 43:16A-10(b)(2).

A review of the legislative history of the provision in question supports this result. In 1897 the Legislature allowed municipalities to extend accidental death benefits to a fireman's widow "during her widowhood" or to dependent parents of such fireman; however, if neither widow nor parents survived but there were children, the law provided: "Such pension shall be applied under the direction of the mayor of such city to the support of such child or children until they have attained the age of sixteen (16) years." L. 1897, c. 148, sec. 2, p. 284. In 1902 beneficiaries of policemen were granted accidental death benefits. The law similarly provided that the annuity continue "so long as she remains unmarried and at her death, unmarried," to go to minor children under the age of fourteen. L. 1902, c. 165; R.S. 40:174-55. However, accidental death benefits were later provided for beneficiaries of county policemen to be paid to "the widow or children * * * so long as such widow remains unmarried or so long as such children or any of them remain under the age of 16 years." L. 1914, c. 36, sec. 4. While the Legislature has consistently excluded payments to widows upon remarriage, various other police and fireman pension laws reveal divergent provisions concerning benefits to surviving children after such event. Cf. N.J.S.A. 43:10-25; N.J.S.A. 43:10-38; N.J.S.A. 43:12-18 (now repealed); N.J.S.A. 43:12-28.1; N.J.S.A. 43:13-22.21 to 22.28.

In 1920 the predecessor of the existing Police and Firemen's Pension laws was enacted. Section 3, relating to pensions for dependents of a member who lost his life while on duty, included the following provision:

"If any widow entitled to a pension as aforesaid remarries, then such pension shall cease and shall not be paid to such widow or her children."
L. 1920, c. 160.

This proscriptive clause concerning death benefits remains in the law governing the various police and firemen's pension funds which were consolidated by L. 1944, c. 253. N.J.S.A. 43:16-4. However in the same law annuities are provided for widows, de-

pendent parents, and surviving children of a *retired* member without expressly terminating payments to children of a remarried widow. N.J.S.A. 43:16-3. Recently the Law Division of the Superior Court held that a minor child was entitled to receive benefits under this section even though her widowed mother had remarried. *Clancy v. Consolidated Police and Firemen's Pension Commission*, Docket No. L-9324-56, decided March 24, 1958 (not officially reported).

On May 23, 1944, the same date the Legislature reenacted the express prohibition against such payments quoted above, N.J.S.A. 43:16-4, L. 1944, c. 253, it also enacted the law establishing the new police and firemen's retirement system, L. 1944, c. 255, N.J.S.A. 43:16A-1 et seq., at the same time continuing the consolidated system as to certain police and firemen. N.J.S.A. 43:16-1. The new law contained the section relating to accidental death benefits in question, in language almost identical to N.J.S.A. 43:16-3 as interpreted by the *Clancy* case. N.J.S.A. 43:16A-10. In view of this different legislative expression on the very same subject matter, and the subsequent holding in the *Clancy* case, there is an intent to provide continued payments to dependent children after the widow's remarriage would be authorized. Cf. *Key Agency v. Continental Cas. Co.*, 31 N.J. 98, 105 (1959).

In recent years the Legislature has adopted this liberal view, without ambiguity in other pension laws. In the revisions of the Teachers' Pension and Annuity Fund Law, L. 1955, c. 37, and the Public Employees' Retirement System law, L. 1954, c. 84, §§ 46 and 49, respectively, N.J.S.A. 18:13-112.48, N.J.S.A. 43:15A-49, the Boards of Trustees are directed to pay an annuity upon an accidental death of a member:

"* * * if [there be] no widow, or in case the widow dies or remarries before the youngest child of such deceased member attains age 18, or if the member was a married female employee, then to the child or children of such member under age 18, divided in such manner as the board in its discretion shall determine to continue until the youngest surviving child dies or attains age 18."

The pension laws concerning accidental death benefits are remedial, and accordingly have been construed in light of analogous principles governing the Workmen's Compensation Act. *Roth v. Board of Trustees, etc.*, 49 N.J. Super. 309, 319 (App. Div. 1958). It is clear that a dependent child does not lose such compensation by the widow's subsequent remarriage. N.J.S.A. 34:15-13(g).

In accordance with the liberal purpose of the pension laws, *Salz v. State House Commission*, 18 N.J. 106, 111 (1955); *Roth v. Bd. of Trustees, etc.*, *supra*, providing accidental death benefits to beneficiaries of a policeman or fireman, the subject child qualifies for benefits despite the widow's remarriage. We therefore advise you that the present application for dependency payments should be allowed.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: LEE A. HOLLEY
Deputy Attorney General