

FORMAL OPINION

May 14, 1964

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

MEMORANDUM OPINION - NO. 4

Dear Mr. Kervick:

You have asked who are the proper beneficiaries of the death benefits of Albert Galinn and of Charles L. Payton, both of whom are deceased members of the Public Employees' Retirement System. For the reasons stated below, in our opinion, the beneficiaries are those named as beneficiaries in the retirement applications of these members, notwithstanding that they died before their proposed effective retirement dates.

The facts in the Galinn matter are as follows: In 1943 Albert Galinn became a member of the State Employees' Retirement System (now the Public Employees' Retirement System). On May 28, 1956 Albert Galinn executed a designation of beneficiary form wherein he named as beneficiaries Stanley I. Galinn, Leatrice E. Williams and Janet E. Friedman, or survivor, share and share alike. Said form was filed with the System on June 4, 1956. On October 4, 1963 Albert Galinn executed an application for service retirement to become effective June 30, 1964 under Option 1. In the application Mr. Galinn designated Stanley I. Galinn to receive any and all amounts to become due upon his death. The application for service retirement was received by the System on October 7, 1963. On October 14, 1963 Albert Galinn died. The Board of Trustees of the Public Employees' Retirement System never took any action on the retirement application. There is presently owing to the beneficiaries of Albert Galinn the sum of \$18,296.33 (\$7,605.00 - Non-contributory Group Life Insurance; \$5,070.00 - Contributory Group Life Insurance; \$3,779.30 - Employee Contributions; \$1,842.03 - Interest on Contributions).

The facts in the Payton matter are as follows: Charles L. Payton executed his application for enrollment in the State Employees' Retirement System on October 30, 1939. In his application for membership, he nominated his father and mother, Henri and Albertine Pautot, as his beneficiaries. On November 1, 1956, he enrolled in the State of New Jersey Group Life Insurance Plan and he designated his mother, Mrs. Albertine M. Pautot, as the beneficiary of the death benefit to be paid thereunder. By a letter dated February 13, 1962, Mr. Payton was advised by Doris G. Goulding, Chief, Enrollment & Claims Bureau, that the following primary designations are reported for his account: Group Life Insurance - Mrs. Albertine M. Pautot - Mother; Return of Accumulated Deductions - Henri Pautot - Father; Albertine Pautot - Mother. A change of designation of beneficiary form (P40-5) was enclosed in duplicate, and the decedent was requested to have this form completed and signed in the presence of a Notary Public if he desired that the same beneficiary receive all death benefits that may become due. No reply to the foregoing letter was ever received by the Division of Pensions.

On December 13, 1963, Mr. Payton applied for retirement to become effective July 1, 1964. In the retirement application he selected the maximum allowance without option. He designated Mrs. Albertine M. Pautot and Mrs. Elizabeth A. Payton, his mother and wife respectively, as the beneficiaries to receive payment of any and

ATTORNEY GENERAL

all amounts due or to become due upon his death. The beneficiary of the paid-up life insurance benefit of 3/16 of salary paid during the last year of creditable service was his mother and his wife since he did not specify a different beneficiary in the space provided therefor. The form was notarized on December 13, 1963 and acknowledged and filed by the Secretary to the Board on December 27, 1963.

Mr. Payton died on February 15, 1964. The Board had not taken any action on his application. Since the death occurred prior to the retirement date of July 1, 1964, the in service benefits payable in this case will be approximately \$11,200.80 covering accumulated contributions and \$22,800.00 covering both the non-contributory and contributory insurance.

It is our opinion for the reasons set forth herein that the proper beneficiaries are those named in the retirement applications, namely, Stanley Galinn, in the one case, and Mrs. Albertine M. Pautot and Mrs. Elizabeth A. Payton, in the companion situation.

The common issue posed by the stated facts in both cases is whether the beneficiary designation of a retirement application constitutes an amendment or change of a previously filed designation of beneficiary when acknowledged and filed, notwithstanding that the employee dies before the effective date when retirement is to commence.

The payment of non-service connected death benefits to a designated beneficiary is governed by N.J.S.A. 43:15A-41c. By virtue of the aforesaid section, a member's accumulated deductions, with regular interest, and an amount equal to 1-1/2 times the compensation upon which a member's contributions are based, are payable to the member's designated beneficiary. Where the member has made optional contributory payments, an additional amount equal to the compensation received in the member's last year of creditable service is also payable to the member's beneficiary, designated to the insurance company through the policyholder. N.J.S.A. 43:15A-94.

Subsection "d" under N.J.S.A. 43:15A-41 provides for the change of beneficiary for the benefits payable under subsection "c" and reads in pertinent part:

"A member may file with the board of trustees, and alter from time to time during his lifetime, as desired, a duly attested written new nomination of the payee of the death benefit provided under this section"

To change a beneficiary there are only two requirements: (1) a duly attested written nomination, and (2) the filing thereof with the Board of Trustees. The prerequisites for effecting a change of beneficiary under N.J.S.A. 43:15A-41d do not significantly differ from those required by N.J.S.A. 43:15A-94.

Under N.J.S.A. 43:15A-41d, a duly attested written nomination is necessary to change a beneficiary, filed with the Board of Trustees. N.J.S.A. 43:15A-94 calls for the same duly attested written designation, filed, however, with the insurance company "through the policyholder." The policyholder under both Non-contributory and Contributory Group Life Insurance Policy (Policy No. G-13900) is the Board of Trustees of the Public Employees' Retirement System of New Jersey. (Today, the State Treasurer is the group policyholder for the non-contributory insurance program involving members of the Teachers' Pension and Annuity Fund and the Public Employees' Retirement System, while the respective Boards of Trustees are the group policyholders for the separate contributory insurance policies.) Inasmuch as the policyholder is the Board of Trustees, filing with the Board would satisfy the statutory requisite under N.J.S.A. 43:15A-94.

FORMAL OPINION

Moreover, construing the change of beneficiary language in sections 43:15A-41d and 43:15A-94 alike comports with the realities of the situation as it must have been contemplated by the Legislature when the bill was enacted which permits the retirement systems to be funded through private insurers. The scheme of administering the policies has been left to the Division of Pensions. All of the records are maintained at the Division of Pensions. Beneficiary designations are filed with Enrollment and Claims Bureau and Records Section. Designations of individuals are accepted by this Bureau without further approval of the insurance company. Only special designations, such as appointing trustees as beneficiaries, are forwarded to the insurer for approval. The insurance company does not maintain any records pertaining to the designation of a beneficiary who is an individual.

The Director and Assistant Director of the Division of Pensions have been specifically authorized by the State Treasurer, the policyholder, to issue checks for the payment of the non-contributory insurance benefits. In addition to the signature of the Director or his alternate, the Assistant Director, the contributory insurance payments require the counter-signature of the Secretary to the Board of Trustees of the Public Employees' Retirement System or the Secretary to the Teachers' Pension and Annuity Fund, as the case may be.

Thus, the filing of a beneficiary designation, the maintaining of records pertaining thereto, and the payment of both the non-contributory and contributory insurance benefits are administered by and through the Division of Pensions under what is commonly referred to as the "short method of claims administration." Using this short method of claims administration, the group insurance program results in savings which would be lost if the insurance company were to administer the program itself. Since the Division of Pensions through the self-administration of the policies determines who is to be paid and issues the checks for payments, it is reasonable to conclude that the method required to change a beneficiary existing under N.J.S.A. 43:15A-41d should be the same under N.J.S.A. 43:15A-94. Therefore, the clauses in both sections should be construed alike, namely, that the filing with the Board of Trustees effects a change of beneficiary under N.J.S.A. 43:15A-94 just as under N.J.S.A. 43:15A-41d.

The retirement applications filed by Mr. Galinn and Mr. Payton have squarely met the necessary requisites of attestation and filing to effectively change the beneficiaries in each case. No magic language of revocation or alteration is statutorily demanded for the change; it is sufficient to satisfy the statute without resort to the recitation of a formula.

The language utilized in the particular retirement application form (P30-42-961) and executed by the decedents herein reinforces the view that the beneficiaries have been altered as desired. Paragraph 10 of the application reads:

"I hereby nominate the following named person as the beneficiary who shall receive payment of any and all amounts due or to become due upon my death. (Do Not Leave Blank - Name estate if specific beneficiary is not named.)"

The language "any and all amounts due or to become due upon my death" is broad enough to encompass all death benefits payable, regardless of the amount or the time at which death may occur. It is not unreasonable to conclude that an employee's current choice of beneficiary is accurately reflected by the designation he makes on

ATTORNEY GENERAL

his retirement application.

Therefore, it is our conclusion that Stanley I. Galinn, and Mrs. Albertine M. Pautot and Mrs. Elizabeth A. Payton, the beneficiaries named in the retirement applications of Albert Galinn and Charles L. Payton, respectively, are the proper beneficiaries, and the payments by you should be governed accordingly.

Very truly yours,
ARTHUR J. SILLS
Attorney General

By: RICHARD NEWMAN
Law Assistant

July 21, 1964

MR. ROGER H. McDONOUGH
State Librarian
Department of Education
State House Annex
Trenton, New Jersey

MEMORANDUM OPINION—NO. 5

Dear Mr. McDonough:

We have been asked whether or not volunteer fire companies are subject to the provisions of the Destruction of Public Records Act, N.J.S.A. 47:3-15, *et seq.* Specifically, you ask whether volunteer fire companies which receive financial support from municipalities are subject to the "Destruction of Public Records Act (1953)".

It is our opinion that such volunteer fire companies are subject to the Act:

The definition section of Chapter 410, Laws of 1953 (N.J.S.A. 47:3-16) provides in part as follows:

"As used in this act, except where the context indicates otherwise, the words 'public records' mean any paper, written or printed book, document or drawing, map or plan, photograph, microfilm, sound-recording or similar device, or any copy thereof which has been made or is required by law to be received for filing, indexing, or reproducing by any *officer, commission, agency or authority of the State or of any political subdivision thereof*, including subordinate boards thereof, or that has been received by any such officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, in connection with the transaction of public business and has been retained by such recipient or its successor as evidence of its activities or because of the information contained therein." (Emphasis supplied).