



**THE ATTORNEY GENERAL
OF TEXAS**

Gerald C. Mann

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

**Honorable Mortimer Brown
Executive Secretary
Teacher Retirement System of Texas
Austin, Texas**

Dear Sir:

Opinion No. 0-2009

**Re: Procedure for disbursement
of teacher retirement sys-
tem funds under facts here-
inafter stated.**

**We have your letters of February 26, 1940, and
March 11, 1940, and a copy of a letter addressed to you,
signed by Mr. W. N. Henry, which is dated March 9, 1940.
These letters present the following facts:**

**Margaret T. Henry, wife of W. N. Henry, was at
the time of her death a member of the Teacher Retirement
System of Texas. Margaret T. Henry died on March 10, 1939,
but had, prior to her death, designated her daughter,
Theodora Henry, a minor, as her beneficiary to receive the
return of her accumulated contributions in the Teacher Re-
tirement System in the event of her, Margaret T. Henry's,
death before retirement. The amount outstanding to the
credit of Margaret T. Henry at the time of her death was
\$31.05. On February 16, 1940, Theodora, the minor daughter
and beneficiary of Margaret T. Henry, died while the
above amount was still in the hands of the Teacher Retire-
ment System. Theodora Henry is survived only by her
father, W. N. Henry, a brother, Robert Alphonso Henry, and
a sister, Miss Willie Margarett Henry. Both Robert Al-
phonso and Willie Margarett were of age at the time of
their mother's death. The \$31.05, above mentioned, is
at the present time in the hands of the Teacher Retirement
System of Texas.**

**We now quote from a portion of your letter of
February 26, 1940, which presents the matters for our con-
sideration:**

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"In View of the fact that the minor has died, would the Teacher Retirement System be protected in paying the money to the County Clerk? As the sum of money is small, this office would like to find a way to settle the case without causing any court procedure that would be of expense to the party who is entitled to receive the money, if that can be done in accordance with the law and with full protection to the Teacher Retirement System. The Teacher Retirement System would like to have your opinion as to what procedure could and should be used in a case like this."

Article 4112a, Section 1, Vernon's Revised Civil Statutes, 1925, provides:

"Section 1. Whenever any minor, lunatic, idiot, or non compos mentis, who has no legal guardian shall be entitled to any sum or sums of money not exceeding Two Hundred and Fifty Dollars (\$250) from any person, firm, corporation, administrator, executor, guardian, or trustee, arising out of any liquidated and uncontested claim, such person, firm, corporation, administrator, executor, guardian, or trustee holding such sum may pay same over to the County Clerk of the county in which said minor, lunatic, idiot, or non compos mentis resides, for the account of said minor, lunatic, idiot, or non compos mentis, and the receipt of the County Clerk therefor shall be forever binding on said minor, lunatic, idiot, or non compos mentis, as of the date and to the extent of the payment so made."

This is the statute to which you refer in asking whether the Teacher Retirement System could pay the money to the County Clerk.

It is our opinion that the \$31.05 standing to the credit of Margaret F. Henry could not and should not be disbursed under the provisions of this statute. We feel that there is no necessity to elaborate on this point, but for general authority we quote from 39 Tex.Juris., p. 160, sec. 88:

" . . . But a court will not assume to construe or interpret a statute if there is no necessity for it to do so, that is, if the statute is susceptible of but one construction. On the contrary, it is settled by many decisions that there is no room for construction when the law is expressed in plain and unambiguous language and its meaning is clear and obvious. In such a case the law will be applied and enforced as it reads, regardless of its policy or purpose, or the justice of its effect. In other words, a court is not authorized to indulge in conjecture as to the intention of the Legislature, or to look to the consequences of a particular construction, unless the meaning of the statute is doubtful. . . ."

The law, in this instance, is clear and obvious and is susceptible to only one construction; the construction being, that the statute contemplates payment being made for the benefit of some minor and that the minor is a living person. Under the facts, herein presented, Theodoris Henry is dead and none of her heirs are minors, therefore, Article 4112a is not applicable.

You next ask our opinion as to the proper and most plausible procedure to be followed in the disbursement of this \$31.05.

Article 2922-1, Section 9, Vernon's Revised Civil Statutes, provides:

"The right of a person to an annuity or a retirement allowance, to the return of contributions, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Act, and the moneys in the various funds created by this Act, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Act specifically provided."

In the case of Modern Woodmen of America vs. Yanowsky, (Ct. Civ. App. Tex., 1916) 187 S. W. 728, the Court, on page 732, said:

"Defendant in error insists that, because the petition shows on its face that the fund sued for is exempt property, any attempt by the court to subject it to administration is null and void, as is the case with homesteads. This is a correct proposition of law as to exempt property. *Kimmons v. Abraham*, 176 S. W. 671; *Childers v. Henderson*, 76 Tex. 664, 13 S. W. 481; *Dignowity v. Baumblatt*, 38 Tex. Civ. App. 363, 85 S. W. 835." --See also, *N. J. Mullins & Co. v. S. M. Thompson, Administrator* (Sup. Ct. Tex., 1879), 51 Tex. 7; and *White, et al vs. White* (Civ. App. Tex., 1895), 32 S. W. 48.

In the light of the cases cited and Section 9 of Article 2922-1, even though W. M. Henry is the legal administrator of his wife's estate, it is our opinion that the \$31.05 is not subject to administration but passed to Theodoris Henry, upon the death of her mother, free from any claim against the mother's estate.

Then, upon the death of Theodoris Henry, assuming that she died intestate, and that no legal representative has been appointed, all of her property, including her right to the \$31.05 passed to her heirs, whoever they might be, under our statutes of descent and distribution, Title 48, Vernon's Revised Civil Statutes, 1925. See *Central Texas Mutual Life Ass'n vs. Beaty, et al* (Ct. Civ. App. Tex., 1929), 20 S. W. (2d) 836, where the court on page 837 says:

". . . The rule in this state, as elsewhere, is that benefits accruing under certificates of membership in mutual aid or benefit associations vest in the beneficiary entitled thereto on accrual and pass at the death of such beneficiary to his legal representatives or heirs. *Brotherhood of Railway Trainmen v. Dee*, 101 Tex. 597, 603, 111 S. W. 396, 399; *Knights of Maccabees v. Patton*, 179 Ky. 410; 200 S. W. 614; 19 R. C. L. p. 1309, ¶ 99, and authorities cited in notes 20 and 1 on said page; 45 C. J. p. 247, ¶ 191, and notes 96 and 97. Even under the provisions of our *Workmen's Compensation Act* (Rev. St. 1925, arts. 8306-8309), declaring that the compensation therein provided for the death of an

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employee shall be for the sole benefit of the beneficiaries named therein, the right to such compensation vests in such statutory beneficiaries on such death and passes on the death of such beneficiaries to their heirs or legatees. Moore v. Lumbermen's Reciprocal Ass'n (Tex. Com. App.) 258 S. W. 1051, 1952-1956; Id. (Com. App.) 262 S. W. 472; Texas Employers' Ins. Ass'n v. McPhonnell (Tex. Civ. App.) 273 S. W. 294, 296."

It is, therefore, our opinion that the heirs of Theodoris Henry are entitled to the \$31.05, and disbursements should be made under the provisions of Title 48, Vernon's Revised Civil Statutes, 1925. In order to properly disburse these funds, and to protect the Teacher Retirement System, you should obtain affidavits from W. M. Henry, Robert Alphonso Henry, Willie Margarett Henry and several reputable persons (this number is left to your discretion) who know and have known the history of his family. The purpose of these affidavits is to prove that the three above mentioned persons are the sole heirs of Theodoris Henry, as is stated in the information you have furnished us.

In order to establish the fact that the three above mentioned persons are the sole heirs of Theodoris Henry, the affidavit should include among other things, that (1) the affiant knew W. M. Henry and Margaret Henry; stating the number of years; (2) W. M. and Margaret Henry were married; (3) they had only three children, Robert Alphonso Henry, Willie Margarett Henry and Theodoris Henry; (4) Margaret Henry died on or about the ___ day of _____, 19___; (5) Margaret Henry was survived by her husband, W. M. Henry, a son, Robert Alphonso Henry, a daughter, Willie Margarett Henry, and another daughter, Theodoris Henry, who was a minor; (6) Theodoris Henry, a minor, died on or about the ___ day of _____, 19___; (7) at the time of her death, Theodoris Henry was a minor; was not married and had never been married prior to her death and left no husband or children; that she had no brothers or sisters, dead or alive, other than Robert Alphonso Henry, a brother, and Willie Margarett Henry, a sister; or, if Theodoris Henry had any deceased brothers and sisters, that these deceased brothers or sisters left no children, grandchildren or other descendants.

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Upon the receipt of the above mentioned affidavits, and proofs of death of both Theodoris and Margaret Henry, if you are satisfied that W. N. Henry are the sole heirs of Theodoris you will be justified in dividing the \$31.05 into two equal portions and paying one such portion to W. N. Henry and dividing the other portion equally between Robert Alphonso Henry and Willie Margarett Henry.

As stated above, this money is to be disbursed in accordance with Title 48, Vernon's Revised Civil Statutes, 1925, and if the affidavits reveal that Theodoris had any other heirs, at the time of her death, such as a husband, children, descendants of such children, if any, or had any brothers or sisters, other than Robert Alphonso and Willie Margarett, or has had brothers or sisters who are now deceased but who left descendants, then the \$31.05 would have to be pro rated differently, in accordance with Title 48, Vernon's Revised Civil Statutes, 1925.

Trusting that this answers your questions, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Walter R. Koch
Assistant

By

Henry Shuford

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