



## OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable John S. Rudd, Jr.  
Assistant Director and Actuary  
Teacher Retirement System of Texas  
Austin, Texas

Dear Sir:

Opinion No. 0-4187

Re: Death of retired member of  
Teacher Retirement System  
after August 31, 1941.

We have received your letter of October 30, 1941,  
in which you ask the opinion of this department on the fol-  
lowing three questions:

1. Where a member made application prior  
to August 31, 1941, for service retirement bene-  
fits to be effective August 31, 1941, and died  
before September 30, 1941, should the accumulated  
contributions standing to the credit of such mem-  
ber's account be paid as provided in Section 5,  
Subsection 8 of the Teacher Retirement Law, and  
no additional payments or awards made?

2. Where such member dies after September 30,  
1941, but before he actually received the Septem-  
ber 30th payment due him under the retirement al-  
lowance, should additional payments thereafter be  
made in accordance with the option selected by the  
member?

3. Should the September 30th payment be paid  
to the administrator of the deceased member's estate?

Subsection 22 of Section 1 of the Teacher Retirement  
Act (Article 2922-1, Vernon's Annotated Civil Statutes) pro-  
vides as follows:

"(22) 'Retirement' shall mean withdrawal  
from service with a retirement allowance granted  
under the provisions of this Act."

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Subsection 1 of Section 5 reads as follows:

"1. Service Retirement Benefits.

"Any member may retire upon written application to the State Board of Trustees. Retirement shall be effective as of the end of the school year then current, provided that the said member at the time so specified for his retirement shall have attained the age of sixty (60) years and shall have completed twenty (20) or more years of creditable service, and provided further that no retirement shall be effective prior to August 31, 1941. Any member in service who has attained the age of seventy (70) years shall be retired forthwith, provided that with the approval of his employer he may remain in service." (Emphasis supplied)

Thus, it is seen that the statute specifically provides that no retirement because of service "shall be effective prior to August 31, 1941."

Subsection 7 of Section 5 provides in part as follows:

"7. Optional Allowances for Service Retirement.

"With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active member at the time of death, until the first payment on account of any service benefit becomes normally due, any member may elect to receive his membership annuity in an annuity payable throughout life, or he may elect to receive the actuarial equivalent at that time, of his membership annuity in a reduced membership annuity payable throughout life with the provision that:

"Option (1). \* \* \*"

It is provided if a beneficiary dies within 30 days after retirement that no optional selection shall be effective and that such beneficiary shall be considered as an active member at the time of death.

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Subsection 6 of Section 5 reads in part as follows:

"6. Return of Accumulated Contributions.

"Should a member cease to be a teacher except by death or retirement under the provisions of this Act, he shall be paid in full the amount of the accumulated contributions standing to the credit of his individual account in the Teacher Saving Fund. Should a member die before retirement, the amount of his accumulated contributions standing to the credit of his individual account shall be paid as provided by the laws of descent and distribution of Texas unless he has directed the account to be paid otherwise. \* \* \*"

If a member dies within 30 days after retirement, then Subsections 6 and 7 place him in the position occupied by a member who died before retirement. Therefore, "the amount of his accumulated contributions standing to the credit of his individual account shall be paid as provided by the laws of descent and distribution of Texas unless he has directed the account to be paid otherwise." It follows that your first question is answered in the affirmative.

We now turn to your second question. Where a member has made an optional selection under Section 5(7), is the actual receipt of his first monthly payment a prerequisite to the effectiveness of the option? We think not. The statute does not require it, and there would be no authority or justification to read it into the statute. The retired member did not die within 30 days after retirement; and before the first payment became due, the member selected his option. It follows that a valid option was effected. Your second question is, therefore, answered in the affirmative.

The person whom the member nominated or designated under the optional selection provisions would not be entitled or have the right to a monthly payment of the membership annuity until after the retired member had died. The first payment became due while the retired member was living. You

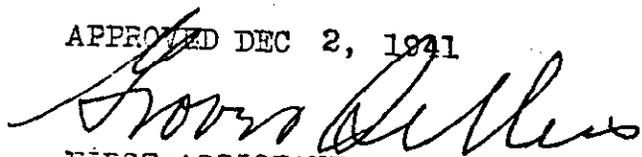
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are respectfully advised, therefore, that the September 30th payment should be paid to the administrator of the deceased member's estate.

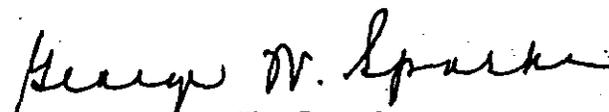
Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED DEC 2, 1921



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