



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

October 23, 1975

FILE NO. S-979

PENSIONS:
Right of Widower to
Accidental Death Benefit

Michael L. Mory
Secretary
State Employees' Retirement System
of Illinois
1201 South Fifth Street
Springfield, Illinois 62706

Dear Mr. Mory:

I have your letter wherein you state, in part,
as follows:

"The State Employees' Retirement System is presently holding the processing of a claim made under Illinois Revised Statutes Chapter 108 1/2, Section 14-166 (1973). Demand for payment pursuant to this Section has been made by the widower of the deceased member. The female member died an accidental death from injuries received in the performance of duty to the State. The member's dependent husband has applied for Death Benefits under Section 14-166 * * *.

* * *

Section 14-166 provides that where no widow, dependent children, dependent father or dependent mother survive the deceased member, the Accidental Death Benefit shall not be paid. In this situation, the Ordinary Death Benefit is to be paid pursuant to Section 14-154. However, Section 14-154 provides that accumulated contributions and Death Benefits are to be paid 'upon death of the member . . . from any cause other than . . . injuries received in the performance of duty to the State' (emphasis supplied).

In the instant case, the deceased member's widower is applying for the Accidental Death Benefit under Section 14-166. There are no dependent children. The following questions are raised with respect to this claim:

1. Did the legislature intend that a widower could not receive Accidental Death Benefits under Section 14-166 upon the death of his deceased wife-member?

2. Despite the language of section 14-154, may Death Benefits be payed under section 14-154 where a deceased member's death resulted from injuries received in the performance of duty to the State and the member is not survived by a spouse, child or dependent parent?

3. May partial payment be made pursuant to Section 14-166(a) solely or is the entire statute to be construed as a whole, thereby necessitating payment under the other sub-sections of section 14-166 as well?

* * *

"

Michael L. Mory - 3.

Section 14-166 of the Illinois Pension Code (Ill. Rev. Stat. 1973, ch. 108 1/2, par. 14-166) provides a scheme for paying benefits upon the death of a member of the State Employees' Retirement System when the death results from injuries sustained in the performance of the member's duties.

Section 14-166 provides as follows:

"§ 14-166. Accidental death benefit. (a) Upon death of a member before retirement as the proximate result of bodily injuries sustained or a hazard undergone while in the performance and within the scope of his duties, if such injuries or hazard were not the consequence of his willful negligence, his accumulated contributions shall be payable to such person as he has nominated by written direction duly acknowledged and filed with the board or if no such nomination to the estate of the member. When an annuitant is re-employed by a department, the accumulated contributions payable on his account after his death in line of duty shall, if he has not previously elected a reversionary annuity, consist of the excess, if any, of his total accumulated contributions for all creditable service over the total amount of all service retirement allowance payments received by him prior to his death.

(b) In addition to the foregoing payment, an accidental death benefit of 50% of his yearly earnable compensation for the 12 months next preceding his death during which he was a contributor, shall be payable to his widow to continue during her widowhood, plus an additional annuity equal to 15% of yearly earnable compensation on account of each minor child of the deceased member payable until such child attains age 18, dies or marries, whichever first occurs, subject to a limitation on the combined benefits to a widow and children of 75% of

yearly earnable compensation.

(c) If there is no widow or if the widow dies or remarries before any child of the member has attained age 18, then each such child shall be entitled to an annuity of 15% of the deceased member's yearly earnable compensation to continue until he attains age 18, marries or dies, whichever first occurs, subject to a limitation of 50% of yearly earnable compensation to all such children.

(d) If there is no widow or eligible children, the benefit shall be paid to the member's dependent father and dependent mother, equal to 25% of yearly earnable compensation to each beneficiary to continue for life.

(e) If none of the aforementioned beneficiaries is living at the death of the member, the accidental death benefit shall not be payable but the ordinary death benefit shall be payable as provided in this Article.

(f) For a member with less than 12 months of membership service, the yearly earnable compensation shall be established by a conversion to a yearly basis of his earnable compensation for the actual number of months of service rendered.

(g) If the annuity or annuities payable under this section is less than the survivors annuity or annuities, the beneficiary or beneficiaries may elect to receive in lieu of such annuities, the survivors annuities. As amended by act approved Aug. 5, 1963. L. 1963, p. 2371."

"Widow" has generally been defined as a "woman whose husband is dead, and who has not remarried". (Black's Law Dictionary 1771 (4th Ed.)) Your first question raises

Michael L. Mory - 5.

the issue of whether the use of the term "widow" in section 14-166 means that the legislature intended to limit the grant of accidental death benefits to surviving spouses who are women. Section 14-109 of the Pension Code (Ill. Rev. Stat. 1973, ch. 108 1/2, par. 14-109) defines "member" as "any employee" who has a membership in the Retirement System. Section 14-131 of the Code (Ill. Rev. Stat. 1973, ch. 108 1/2, par. 14-131) states: "'Masculine includes feminine': The masculine pronoun includes the feminine pronoun." It can be argued that these two sections evidence a legislative intent that the term "widow" should include both male and female spouses of deceased members. This argument is buttressed by cases which have interpreted "widow" to refer to all surviving spouses. C., C., C. & St. L. Ry. Co. v. Baddeley, 150 Ill. 328; In re Estate of Dillman, 8 Ill. App. 2d 239.

However, there are two obstacles to construing "widow" as including all surviving spouses. First, article 14 of the Pension Code (Ill. Rev. Stat. 1973, ch. 108 1/2, pars. 14-101 et seq.) uses the term "widower" in three sections. Provisions

Michael L. Mory - 6.

regarding survivors benefits (Ill. Rev. Stat. 1973, ch. 108 1/2, pars. 14-158 to 14-160) specify that both widows and widowers may qualify as beneficiaries. These provisions reflect a legislative intent that the terms "widow" and "widower" each have a distinct meaning in article 14. Where the same word is used in different sections of the same legislative act, there is a presumption that it is employed with the same definite meaning unless there is something in the act to show clearly that a different meaning was intended. (Lawton v. Sweitzer, 354 Ill. 620.) The use of both the terms "widow" and "widower" in article 14 establish a definite, distinct meaning for each term. There is no clear indication that the legislature intended the definite meaning of "widow" to be diluted in section 14-166. If the legislature had intended that the accidental death benefits provided by section 14-166 were to be available to both male and female spouses, it could have easily added the word "widower" just as it had in providing for survivors benefits. The second reason for rejecting the expansion of the ordinary meaning of "widow" to include all surviving spouses is that section 14-166 has recently been amended by Public Act 79-778. When

Michael L. Mory - 7.

the provisions of an act are amended, there is a presumption that the legislature intended to make some change in existing law. (Livingston v. Meyers, 6 Ill. 2d 325.) Public Act 79-778 became effective on October 1, 1975. This act substitutes "surviving spouse" for "widow" and also replaces the masculine pronoun "his" with the word "member". Enactment of Public Act 79-778 is a strong indication that without these changes, section 14-166 conferred accidental death benefits only on female surviving spouses.

It is, therefore, my conclusion that section 14-166, prior to the amendments effected by Public Act 79-778 was not intended to confer accidental death benefits on widowers. The issue presented by this conclusion is whether the sex based distinction between surviving spouses is constitutional.

The Illinois Supreme Court in People v. Ellis, 57 Ill. 2d 127, held that a statute which provided that 17-year-old males were to be treated as adults while 17-year-old females were to be treated as juveniles violated section 18 of article I of the Illinois Constitution of 1970 which reads:

Michael L. Mory - 8.

"The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts."

The court in Ellis examined the debates of the Constitutional Convention and concluded that the purpose of this section was to "guarantee rights for females equal to those of males". The old Constitution protected only against irrational sex discrimination; the intent of the new Constitution was to broaden this protection. The court held that section 18 of article I makes sex an inherently suspect classification and that, as a result, a statute containing a sex based classification can be sustained only when the classification is necessary to achieve some compelling state interest.

In determining the existence of a "compelling State interest", the court in Ellis considered a subsequent amendment to the section of the Juvenile Court Act at issue in the case. This amendment eliminated the distinction between male and female. The court took this amendment as some proof that the General Assembly saw no compelling State interest in

Michael L. Mory - 9.

drawing a distinction between the sexes and that, therefore, any prior distinction was unconstitutional. As indicated previously, Public Act 79-778 amends section 14-166 by substituting "surviving spouse" for "widow". The situation parallels the analysis made in Ellis. The removal of the distinction between widow and widower demonstrates that the General Assembly is satisfied that there is no compelling State interest to support the distinction.

The apparent justification for the distinction between widow and widower in section 14-166 was the assumption that widows generally experience greater financial difficulty than widowers. On the basis of empirical evidence supporting this assumption, the United States Supreme Court has held that a State has a legitimate interest in giving some financial assistance to widows. (Kahn v. Shevin, 416 U.S. 351.) However, this interest is not so compelling that its achievement can justify disparaging the contributions females make to the Retirement System.

Michael L. Mory - 10.

By excluding widowers from accidental death benefits, female members of the Retirement System fail to receive the same protection for their survivors that similarly situated male members receive. The amount of money that a member contributes to the System is not determined by the sex of that member. Similarly situated male and female members contribute equally. However, prior to the enactment of Public Act 79-778, the sex of the member did determine whether accidental death benefits were to be distributed. Section 14-166 assured male members that in the event of their accidental death their spouses would receive an accidental death benefit from the System, no such assurance was given to female members. The sex based classification of section 14-166 discriminated against female members of the Retirement System because it provided their families with less protection than it provided the families of male members, even though the family needs might have been identical. It is my opinion that the State's interest in giving financial assistance to widows cannot justify this discrimination. There is no compelling State interest that justifies excluding a member's spouse from all accidental death benefits merely on

Michael L. Mory - 11.

the basis of that member's sex.

Since the sex based classification in section 14-166 fails to achieve any compelling State interest, section 14-166, without the amendments contained in Public Act 79-778, is unconstitutional.

The next issue to be resolved concerns the consequence of finding the sex based distinction in section 14-166 to be unconstitutional. The alternatives are the elimination of all accidental death benefits or the extension of these benefits to both widows and widowers. The court in Ellis was presented with the same type of question. The court in that case considered the subsequent amendment to the Juvenile Court Act in choosing the appropriate alternative. In this case, the subsequent amendment of section 14-166 can be used as a guide in choosing between elimination or extension. Public Act 79-778 is a clear indication that the legislature prefers the extension of accidental death benefits to widowers rather than their elimination. The propriety of this choice is made evident when the inequity and confusion that would result

Michael L. Mory - 12.

from a sudden elimination of accidental death benefits are considered. Therefore, it is my opinion that widows and widowers have an equal claim to accidental death benefits. A widower's claim for benefits under section 14-166, including any claims arising prior to the effective date of Public Act 79-778, must be processed in the same manner as a widow's claim.

Your second question concerns the interpretation of subsection (e) of section 14-166. That subsection provides that the accidental death benefit is not payable when a deceased member is not survived by a spouse, child or dependent parent; instead, "the ordinary death benefit" is to be paid. Since section 14-166 relates to situations where Retirement System members have died while performing their duties, the ordinary death benefit referred to in subsection (e) must pertain to section 14-154 of the Pension Code (Ill. Rev. Stat. 1973, ch. 108 1/2, par. 14-154) which grants death benefits when a member dies prior to retirement. However, as you note in your letter, the death benefit of section 14-154 is payable "upon death of a member * * * from any cause other than * * * injuries received in the performance of duty to the State".

Michael L. Mory - 13.

When the general purpose of a statute is clear, words may be modified, altered or rejected in order to obviate any inconsistency with the legislative purpose. (Baker & Conrad, Inc. v. Chicago Heights Const. Co., 364 Ill. 386.) The purpose of section 14-166(e) is to confer an ordinary death benefit on the nominee or the estate of a Retirement System member when there is no person eligible to receive an accidental death benefit under subsections (b), (c), or (d) of section 14-166. The literal language of section 14-154 is inconsistent with the purpose of section 14-166(e) since strict compliance with this language would prohibit the payment of the ordinary death benefit when a member is fatally injured within the scope of his employment. Yet such compliance would be a mistake, not only because it would deprive section 14-166(e) of all meaning, but also because the intent of the restrictive language in section 14-154 does not require strict compliance. The purpose of withholding the ordinary death benefit when a member is fatally injured is to prevent the survivors of the member from receiving both ordinary and accidental death

Michael L. Mory - 14.

benefits. Section 14-166(e) does not conflict with this purpose since it directs the payment of ordinary death benefits only when accidental death benefits are not payable. The inconsistency between sections 14-154 and 14-166(e) should be resolved by qualifying the language of section 14-154 so that the ordinary death benefit can be paid according to the provisions of section 14-166(e).

Therefore, it is my opinion that the death benefit provided in section 14-154 must be paid, as required by section 14-166(e), whenever (1) a member's death results from illness or injuries received in the performance of duty to the State; and (2) the member leaves no survivor meeting any of the descriptions in subsections (b), (c), or (d) of section 14-166.

Your final question involves the divisibility of the subsections of section 14-166. Payment of a member's accumulated contributions, as dictated by subsection (a), is not an alternative to the payment of benefits described in the other six subsections of section 14-166. Subsection (b) expresses the unity between subsection (a) and the

Michael L. Mory - 15.

remaining subsections with the introductory clause "In addition to the foregoing payment". Section 14-166, therefore, creates a payment scheme which consists of two inseparable components. A member's accumulated contributions are paid upon his death according to the terms of subsection (a). In addition, benefits are paid according to the provisions in subsections (b) through (g).

Very truly yours,

A T T O R N E Y G E N E R A L