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FILE NO. S-655

**PENSIONS:**  
Teachers' Retirement System  
Designation of Beneficiary

Honorable Roy A. Baker  
Director  
Teachers' Retirement System  
of the State of Illinois  
450 Iles Park  
Springfield, Illinois 62706

Dear Director Baker:

I have your recent letter which presents the following questions:

Mr. Louis E. Vickery participated in this System for a period of 10 years until his death June 8, 1973. On February 17, 1964, Mr. Vickery executed a nomination of beneficiary (copy enclosed) designating his mother, Mrs. Zela Vickery, as primary non-dependent beneficiary, and his brother, John R. Vickery, as alternate non-dependent beneficiary. This document was signed and acknowledged by William Barrows, Notary Public, on February 17, 1964. Acknowledgement of receipt of the document was made by this office to Mr. Vickery on March 11, 1964.

We have applications for death refund and death benefits properly completed by Mrs. Zela Vickery, mother of the decedent, who was designated by him as beneficiary. We also have an application for widow's survivor benefits from Mrs. Annetta L. Vickery, widow of the decedent. Her application is in the form of a letter from her attorney, Michael A. Katz, in which he requests that necessary application forms be sent to her. We have been advised that a child of Louis E. Vickery

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also survives. The age of this child is unknown to us at this time.

Shall the Teachers' Retirement System pay the death refund provided in Section 16-138 and the lump sum death benefit provided in Section 16-141 to Mrs. Zela Vickery, mother of the deceased member who is his designated beneficiary; or, in view of the Supreme Court decision rendered in the case of Mary Bergin, Appellee, v. the Board of Trustees of the Teachers' Retirement System, Appellant (Docket No. 38622-- Agenda 31--September, 1964), shall the Teachers' Retirement System disregard the nomination of beneficiary submitted by the deceased member in which he designates his mother as primary non-dependent beneficiary and pay his widow as primary dependent beneficiary under Section 16-140 the benefits provided in Sections 16-138 and 16-141.

We call your attention to amendments enacted in 1965 which added the following paragraph at the end of Section 16-141:

'No election under this section may be made by a dependent beneficiary if a non-dependent beneficiary designated by the member survives such member.'

and the following sentence at the end of the last paragraph in Section 16-142.

'This paragraph (2) is inapplicable where a non-dependent beneficiary designated by a member survives such member.'

Your response to these questions will be appreciated."

Your letter raised the question whether a member of the Teachers' Retirement System may designate a non-dependent beneficiary to receive survivor benefits when he is survived by a person who qualifies as dependent beneficiary under that Act.

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In Bergen v. Board of Trustees, 31 Ill.2d 566, the Illinois Supreme Court passed upon a case which involved a factual situation almost identical to the situation presented in your letter. A member of teachers pension program had designated his mother and brother non-dependent beneficiaries. He subsequently married and had two children. He died without changing his designation of beneficiaries. The court was required to determine whether benefits under the retirement system should be paid to the mother and brother or to the widow and children. The court held that the statutes considered in light of legislative purpose motivating the creation of pension systems requiring that benefits be payable to surviving dependents of a deceased member.

In Bergen supra the court was interpreting those portions of the School Code which created the Teachers' Retirement System. (Ill. Rev. Stat. 1959, ch. 122, par. 25-1 to 25-92 inclusive, see especially pars. 25-57 and 25-57.1.) In 1963, pursuant to a general revision and codification of Illinois Law on publically supported pensions, the General Assembly adopted the Illinois Pension Code. Teachers'

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Retirement Laws were transferred from Chap. 122 to Chap. 108 1/2 and now appear as Article 16, Sections 16-101 to 16-201. (1963 Laws of Ill. p. 161.) The provisions on the payment of survivors benefits now appears as Sec. 16-138, 16-140, 16-141. Ill. Rev. Stat. 1971, ch. 122, par. 16-138, 16-140, 16-141.

You will note that the statutes construed in the Bergen case linked the payment of a refund on death to the payment of a survivors annuity. (Now Ill. Rev. Stat. 1971, ch. 108 1/2, par. 16-138, 16-141; formerly Ill. Rev. Stat. 1969, ch. 122, par. 25-57, 25-57.1.) This connection was eliminated by the 1963 revision of the Illinois Pension Code. The beneficiary of a deceased member may now receive both a refund under section 16-138 and survivors benefit under section 16-141. (Ill. Rev. Stat. 1971, ch. 108 1/2, par. 16-138, 16-141.) Sec. 16-138 now provides:

"Upon receipt by the board of proper proof of the death of a member, his accumulated contributions, together with all additional payments made to this system under Sections 16-128(1) and 16-133.1(5) of this Article, if any, shall be paid to any person he has nominated by written designation executed and filed with the board or, if he has not so nominated any person, to his estate. If death occurs on or after July 1, 1947, the refund shall also

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include the member's contributions for prior service paid prior to July 1, 1939, without interest thereon." (Emphasis added, Ill. Rev. Stat. 1971, ch. 108 1/2, par. 16-138 (1972 Supp.))

This section would require that a refund be paid to the beneficiary designated by the member. The language of this section would govern the benefits under the section unless the Bergen case is controlling in this type situation. The decision in the Bergen case was rendered on November 24, 1964.

In 1965, the General Assembly amended the section on Survivor Benefits in the Illinois Teachers' Retirement System (1965 Laws of Illinois, p. 2237). The language which continues in the present statutes provides:

"(1) A [dependent beneficiary or a non-dependent] beneficiary designated by a member shall be entitled to receive, in a single sum, an amount equal to 1/6 of the annual rate of salary in effect on the date of the member's death, for the school year in which the death occurred, for each completed year of service but not to exceed annual salary.

\* \* \* \* \*

If no beneficiary is designated by the member or if no designated beneficiary survives the member, the lump sum benefit under this paragraph shall be paid to the eligible dependent beneficiary, as determined under Section 16-140(3), or, if there is no dependent beneficiary, to the

known kindred of the decedent as determined by the laws of descent and distribution of this State.

(2) If the deceased member has at least 1 1/2 years of creditable service, had rendered at least 60 days of creditable service within such period immediately preceding death and had not designated a non-dependent beneficiary who survives, a dependent beneficiary may elect to receive

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No election under this section may be made by a dependent beneficiary if a non-dependent beneficiary designated by the member survives such member. (Bracketed material deleted, new material emphasised; Ill. Rev. Stat. 1971, ch. 108 1/2, par. 16-141.)

There have been other subsequent amendments to the section, but they are not pertinent to the discussion in this opinion. You will note that the statute now clearly provides that the right of a designated non-dependent beneficiary who survives, supersedes the right of a dependent beneficiary. The fact that the legislature acted to make this change in the session immediately following the Illinois Supreme Court decision in Bergen indicates its intent to overrule the results.

The legislature has the power to amend publicly supported pension systems in a manner which will best serve the interests of participants. (Keegan v. Board of Trustees,

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412 Ill., 430, 436.) The Legislature is considered to have intended what it has plainly expressed and when words have a definite meaning it is not allowable to go beyond the statute and change their meaning (Chicago Home for Girls v. Carr, 300 Ill. 478, 486; Carroll v. Rogers, 330 Ill. App. 114, 118.) When by amendment words are deleted or added to the statute, it must be considered that the legislature deliberately intended to change the law. (Tower v. Schull, 3 Ill. App. 2d, 358, 364; McLaughlin v. People, 403 Ill. 493, 500.) For this reason, it must conclude that when the legislature, subsequent to the decision in Bergen, amended the section of the Teachers' Retirement System dealing with survivor benefit that it intended to grant to members the right to select the persons entitled to survivor benefits.

Therefore, it is my opinion that a proper written designation of beneficiaries control the payment of refunds and survivor benefits under both section 16-138 and 16-141 of the Illinois Teachers' Retirement System.

Very truly yours,

A T T O R N E Y   G E N E R A L