



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 30, 1978

ATTORNEY GENERAL OPINION NO. 78- 280

Mr. John Corkhill
Executive Director
Public Employees Retirement System
400 First National Bank Tower
One Townsite Plaza
Topeka, Kansas 66603

Re: Retirement--Survivor's Benefits--Eligibility

Synopsis: No survivor's benefits are payable to the widow of one Arthur W. LeRoy, because survivor's benefits are not payable under K.S.A. 74-4958, the retirant never having been a member of a pension and retirement system of a city of the first class prior to election to membership in the Kansas Police and Firemen's System, and, additionally, because the death did not occur within two years from the date of retirement.

* * *

Dear Mr. Corkhill:

You inquire concerning the payment of survivor's benefits to the widow of a deceased member of the Kansas Police and Firemen's System. You advise that the individual in question became a member of the System on March 1, 1967, coinciding with the date of his employment as a fireman by the City of Kansas City, Kansas. That city had affiliated with the System on January 1, 1967. He became totally and permanently disabled due to service-connected causes and was retired on November 16, 1974, but remained on the payroll of the city through March 31, 1975. He applied for service-connected disability benefits under K.S.A. 1974 Supp. 74-4960(1), which application was approved by the System. Benefits accrued from April 1, 1975. He died on July 24, 1978. His widow has inquired concerning survivor benefits which might be payable to her.

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K.S.A. 74-4960(1) provides in pertinent part thus:

"If any active contributing member shall become totally and permanently disabled due to service-connected causes as defined herein, he shall be retired and the following benefits shall become payable and shall continue until his death or until he shall have recovered from his disability" [Emphasis supplied.]

Subsection (d) of this provision sets out one exception to the foregoing. The first paragraph thereof states thus:

"In the event that a member who is retired under clause (a) of subsection (1) of this section dies within two (2) years after the date of his retirement if no benefits are payable under K.S.A. 1965 Supp. 74-4958(3) as amended, then benefits may be payable under K.S.A. 1976 Supp. 74-4959(1) as amended."

K.S.A. 1965 Supp. 74-4958(3), as amended, applies only to a member who, up to the entry date of his employer, was covered by a pension system under K.S.A. 13-14a01 to 13-14a14 or K.S.A. 14-10a01 to 14-10a15. These two referenced acts refer to a separate pension and retirement system maintained by cities of the first and second class, respectively. Thus, K.S.A. 1965 Supp. 74-4958(3), referenced as indicated above, provides for survivor's benefits only for the survivor of a retirant who was formerly a member of a pension and retirement system maintained by the city and who elected membership in the Kansas Police and Firemen's Retirement System. The individual in question here was never a member of a pension and retirement system maintained by a city of the first class, in this instance, the City of Kansas City, Kansas, and thus did not and could not elect membership in the Kansas Police and Firemen's System. Thus, no benefits are payable under K.S.A. 1965 Supp. 74-4958, as amended.

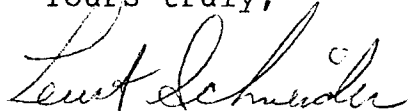
As you point out, the second exception to the cessation of benefits upon the death of the retirant who retired because of permanent service-connected disability provides that if death occurs within two years of the date of retirement, survivor's benefits may be payable under K.S.A. 74-4959. The retirant in this instance

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did not die within two years of the date of retirement, and thus, survivor's benefits are not payable on that ground.

Accordingly, I concur in your view that there is no statutory basis for the payment of survivor's benefits in this instance.

Yours truly,

A handwritten signature in cursive script, appearing to read "Curt T. Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj