



STATE OF KANSAS

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CURT T. SCHNEIDER  
ATTORNEY GENERAL

November 15, 1978

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ATTORNEY GENERAL OPINION NO. 78-365

Mr. Marshall Crowther  
Attorney  
Public Employees Retirement System  
400 First National Bank Tower  
One Townsite Plaza  
Topeka, Kansas 66603

Re: Retirement--Death and Accidental Death Benefits--Eligibility

Synopsis: The widow of Donald Ray Martin is not eligible for insured death benefits under K.S.A. 74-4929 because the policy of insurance providing benefits authorized by that section did not become effective as to Mr. Martin prior to his death. She is likewise ineligible for accidental death benefits under K.S.A. 1977 Supp. 74-4916(2), because Mr. Martin was not a member of the Kansas Public Employees Retirement System at the time of the accident leading to his death.

\* \* \*

Dear Mr. Crowther:

You inquire concerning the eligibility of the widow of Donald Ray Martin for insured death benefits under K.S.A. 74-4929 and for accidental death benefits under K.S.A. 74-4916(2).

You advise that Mr. Martin was employed by the Department of Corrections as a Correctional Officer commencing August 8, 1977. On August 14, 1978, while on duty at the Kansas State Penitentiary, he was assaulted by an inmate, suffering severe injuries. He was taken to the Kansas State Penitentiary infirmary, and subsequently died from his injuries on August 19, 1978. His widow has applied for the benefits described above.

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As an employee of the State of Kansas who was not previously a member of the Kansas Public Employees Retirement System prior to his employment commencing August 8, 1977, Mr. Martin was subject to K.S.A. 74-4911(2), which provides in pertinent part thus:

"Any employee other than an elected official who is employed by a participating employer after the entry date of such employer and who had not attained age fifty-nine (59) at the date of employment shall be a member of the system on the first day of the payroll period coinciding with or following completion of one (1) year of continuous service."

Mr. Martin's initial date of employment was August 8, 1977, and the first day of the payroll period coinciding with or following the completion of one year of continuous service was August 18, 1978. The records clearly indicate that Mr. Martin remained on the payroll of the State of Kansas, as a result of accumulated sick leave, until the time of his death. He therefore became a member of the System on August 18, 1978, one day prior to his death. You advise that contributions were deducted and remitted for all compensation paid for the payroll period commencing August 18, 1978, a period of two days in this instance.

Turning first to the question of the insured death benefit provided under K.S.A. 74-4927, that section permits the Board to establish a plan of death benefits to be paid to the members of the System, and to purchase from one or more life insurance companies a policy or groups of policies of group life insurance to provide the death benefits authorized by this section. You enclose a copy of the certificate of insurance which outlines the terms of the death benefits involved herein.

Section 3 sets forth, first, the individual effective date thus:

"The insurance for which the proposed insured is eligible under the Contract, will become effective on the later of: (a) January 1, 1966, or (b) the date the proposed Insured becomes a member of the Kansas Public Employees Retirement System." [Emphasis supplied.]

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The conditions of individuals' effective dates are stated thus:

"If, due to sickness or injury, the proposed Insured is not actively at work on the date his insurance under this Contract would otherwise become effective, it will not become effective until the first day thereafter on which he is actively at work."

Mr. Martin did not become a member of the System until August 18, 1978. He was hospitalized for his injuries on that date, and died the following day. Thus, he was not actively at work on the date his membership began, August 18, 1977, or thereafter. Under Section 3 of the Certificate of Insurance quoted above, the policy does not become effective as to a proposed insured until the proposed insured becomes a member of the System, first, and until the first day, whether the initial date of membership or thereafter, when the proposed insured is actively at work. As a result, the policy providing death benefits for Mr. Martin did not become effective as to him, and the death benefits provided therein are not payable to his widow.

The question of eligibility for the accidental death benefit arises under K.S.A. 74-4916(2). That section provides in part thus:

"(2)(a) In the event that a member should die before retirement as a result of an accident arising out of and in the course of his or her actual performance of duty in the employ of a participating employer . . . ., an accidental death benefit shall be payable if: (A) . . . [a timely and sufficiently report of the accident is filed with the Board]; and (b) the board finds from such evidence as it may require, . . . that the natural and proximate cause of death was the result of an accident arising out of and in the course of the member's employment with a participating employer . . . ."

At the time of his death, Mr. Martin was a member of the System, employed by a participating employer. Clearly, his death was the result of an incident which occurred in the course of the performance of his duties as such employee. The question which

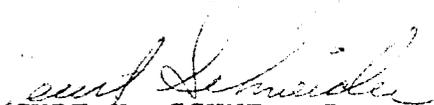
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is presented is whether the accidental death benefit provided by this section is payable upon the death of a member which resulted from an accident, in this instance an assault, which occurred before the employee had become a member of the System.

In my judgment, accidental death benefits are not payable upon the death of a member which results from and is proximately caused by an accident occurring before the employee became a member of the Kansas Public Employees Retirement System. In order to authorize the payment of accidental death benefits under this section, the Board must find that the "natural and proximate cause of death was the result of an accident arising out of and in the course of the member's employment with a participating employer . . . ." In this instance, the death was the result of an accident occurring in the course of Mr. Martin's employment, but not in the course of the employment of a person who was at the time of the accident also a member of the System.

Other language in the section also suggests that the employee must be a member of the System not only at the time of death, but at the time of the accident which causes death. Subsection (2)(a) specifies that the death must arise out of an accident in the course of employment, "independent of all other causes and not as a result of the willfully negligent or intentional act of the member . . . ." [Emphasis supplied.] Causation here is tied specifically to membership in the System, just as it is in the Board's required finding that the death arise out of the "member's employment." Membership in the System at the time of the accident which causes death is a prerequisite for the payment of accidental death benefits under K.S.A. 1977 Supp. 74-4916(a), in my opinion. As a result, because the assault leading to Mr. Martin's death occurred before he became a member of the System, accidental death benefits are not payable therefor.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

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