



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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PENSIONS:

Minimum Survivor's Benefit
Under Teachers' Retirement
System

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

Dear Mr. Baker:

This is in response to your letter regarding benefits payable to surviving dependent beneficiaries under the Illinois Teachers' Retirement System. You ask: "Where the death of an annuitant occurs after June 30, 1975, and an eligible dependent beneficiary survives, should the minimum monthly surviving benefit be (1) 50% of the retirement allowance of the decedent, calculated at the time of retirement; or (2) 50% of the monthly

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allowance being paid to the retired decedent at the time of death." The latter may include supplementary benefits paid under sections 16-133.1, 16-135, 16-136.1, or 16-136.2 of the Illinois Pension Code. (Ill. Rev. Stat. 1975, ch. 108 1/2, pars. 16-133.1, 16-135, 16-136.1, 16-136.2.) It is my opinion that such surviving dependent beneficiaries are entitled to receive 50% of the monthly allowance which is being paid to the deceased member of the Teachers' Retirement System at the time of death.

Pursuant to section 16-142 of the Pension Code (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 16-142) a surviving dependent beneficiary may receive benefits as provided in subdivision (2) of section 16-141 (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 16-141) if certain other conditions are met. If such conditions are met, and if the death of an annuitant occurs after June 30, 1975, a surviving dependent beneficiary may receive a minimum benefit as set forth in section 16-141(2)(f) of the Code. This section states:

"(f) When the death of a member or annuitant occurs after June 30, 1975 the following minimum shall be paid if such minimum exceeds the limitations outlined in paragraph (2)(e) of this section. The minimum total survivors' annuity payable on account of the death of a member shall be 50% of the earned retirement allowance, computed under Section 16-133(b) of this Article, which would have been payable as of the later of attainment of age 60 or date of death when death occurs prior to retirement, or 50% of the retirement allowance

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when death occurs while in retirement."
(emphasis added.)

Accordingly, where death occurs while in retirement, the minimum benefit is 50% of the decedent's retirement allowance. Your question is resolved by determining whether the term "retirement allowance" which is underlined above, refers only to a retirement allowance under section 16-133 of the Code or whether this term includes authorized benefits under other sections of the Code in addition to those provided for by section 16-133.

Under sections 16-133.1, 16-135, 16-136.1 and 16-136.2, supplementary benefits may be paid after a teacher has retired and becomes eligible for the basic annuity and pension payable under section 16-133. The General Assembly must have been cognizant that these supplementary payments are available, that they are in addition to the retirement allowance provided by section 16-133, and that benefits under these supplementary provisions attach after retirement.

The General Assembly used the term "retirement allowance" which for purposes of article XVI of the Code means:

"§ 16-116. Retirement allowance.
'Retirement allowance': The sum of the
'annuity' and the 'pension', or any optional
benefit payable in lieu thereof."

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"§ 16-114. Annuity. 'Annuity': Annual payments payable in equal monthly installments for life, based upon the accumulated contributions of a member."

"§ 16-115. Pension. 'Pension': Annual payments payable in equal monthly installments for life not derived from the accumulated contributions of a member."

The term "retirement allowance" which is used in the last clause of section 16-141(2) (f) of the Illinois Pension Code has not been modified by either "age" as found in section 16-133A, or "earned" as found in the first clause of section 16-141(2) (f). It follows then that it includes not only retirement benefits payable under section 16-133 of the Code but also supplementary benefits additionally payable after a member's retirement.

Furthermore, it has been held that pension laws of this State should be liberally construed to effectuate their purpose and in favor of those intended to be benefited. Gloss v. Bd. of Trustees, 132 Ill. App. 2d 736.

Therefore, I must conclude that when the death of an annuitant occurs after June 30, 1975, and an eligible dependent beneficiary survives, the minimum monthly benefit payable to

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such beneficiary is 50% of the monthly allowance, including supplementary payments under sections 16-133.1, 16-135, 16-136.1 and 16-136.2 of the Illinois Pension Code, which is being paid to the decedent at the time of his death.

Very truly yours,

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