

removing unauthorized visitors from their premises. The statute, being a state law, may be enforced by the county peace officers.

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RETIREMENT AND PENSIONS: Judges Retirement System.

JUDGES RETIREMENT SYSTEM: Rights of survivors where member dies after leaving the bench but before retirement.

Under the judges retirement act, subsequent to the effective date of 1974 PA 337, a member who has died after leaving the bench prior to receiving retirement benefits is not within the category of being a member who died "in office" or "following his retirement"; therefore, the surviving spouse or children of the member are not entitled to benefits under the judges retirement act. Spouses of members of the judges retirement system whose rights were determined prior to 1974 PA 337 are nevertheless entitled to retain their right to spousal benefits.

Opinion No. 5008

September 29, 1976.

Mr. Stephen VanNote
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You have requested my opinion on several questions regarding the judges' retirement act, 1951 PA 198, MCLA 38.801 *et seq*; MSA 27.125(1) *et seq*. In particular, your questions concern MCLA 38.819c; MSA 27.125(19.3), which, in pertinent part, provides:

"(1) If a member who has 8 or more years of service credit dies while in office or if a member dies following his retirement, the applicable following annuity shall be paid:

"(a) To the spouse. If the deceased member or retired member leaves a spouse to whom he was married at the time of his death, the spouse shall be paid an annuity equal to $\frac{1}{2}$ the amount of annuity computed according to section 14 based on the deceased member's final salary and service credit. A spouse's annuity shall terminate upon the death of the spouse.

"(b) To the children. If the deceased member or retired member does not leave a spouse, or if the spouse dies subsequent to the member's or retired member's death, and if no annuity is payable or will become payable under section 15, each of the member's or retired member's unmarried children under the age of 19 years shall be paid an annuity terminating upon his adoption, marriage, attain-

ment of age 19 years, or death, whichever occurs first. The amount of annuity paid a child shall be an equal share of the amount of annuity determined according to subdivision (a). Upon termination of a child's annuity, it shall be divided into equal shares and added to the annuities being paid the remaining eligible children, if any. If a child is attending school full time, the board may continue the annuity during the period of his full-time school attendance, but in no case beyond the child's attainment of age 22 years."

MCLA 38.819c; MSA 27.125(19.3) was added to 1951 PA 198, *supra*, by 1974 PA 337. At the same time, 1974 PA 337 repealed MCLA 38.819a; MSA 27.125(19.1), which had provided:

"The spouse of any member who dies or who shall have died in office or on retirement on or after September 28, 1951, and has had 10 or more years of service prior to death, and which spouse at the time of death of the judge had been married to such judge for at least 10 years of the service, and who has reached the age of 55, shall be entitled to apply to the retirement board for and to receive for life a retirement annuity in the amount of $\frac{1}{2}$ of the retirement annuity provided for such judge in section 14 of this act, until remarriage. If the spouse is not receiving any annuity under section 15, and if there shall be no refund of accumulated contributions under section 19. . . ."

1974 PA 337 also repealed MCLA 38.819b; MSA 27.125(19.2), which had provided:

"If the spouse of a member is less than 55 years of age, but is otherwise entitled to receive a retirement annuity pursuant to section 19a, and having custody of a minor dependent child or children under 19 years of age of the deceased member, shall be entitled, upon application to the retirement board, to receive a retirement annuity in the amount provided above until remarriage or no longer has custody of a minor dependent child or children under 19 years of age of the deceased member, whichever first occurs. The application for and receipt of a retirement annuity pursuant to this section shall not limit the right of the spouse to apply for and receive a retirement annuity pursuant to section 19a upon attaining age 55, and upon so doing the spouse's rights under this section shall terminate. . . ."

MCLA 38.819c; MSA 27.125(19.3), thus, constitutes a substantial relaxation of eligibility standards for spousal benefits under 1951 PA 198, *supra*. No longer must the spouse have attained age 55 or have children under 19 years of age or must the spouse have been married to the deceased for at least 10 years during the judge's service. Benefits are not terminated upon remarriage. The deceased need only have been on the bench for 8, instead of 10 years.

Additionally, MCLA 38.819c; MSA 27.125(19.3) provides, for the first time, an annuity to the deceased member's minor children, if there is no surviving spouse.

In light of the foregoing statutory background, I will now address your specific questions.

"1. A member who had ceased to be judge, had served ten or more years, did not withdraw his contributions, and was entitled to receive an annuity on attainment of age 65, died prior to age 65.

"Are the spouse or children eligible for a benefit under Section 19c of the Judge's Retirement Act at the time of the judge's death? If the answer is negative, are the spouse and children eligible for a benefit at the time the judge would have reached age 65?"

Members of the Judges' Retirement System are entitled, pursuant to MCLA 38.813a; MSA 27.125(13.1), to receive a deferred annuity if they leave the bench for a reason other than retirement or death with more than 10 years of service. These persons remain members of the retirement system until they actually commence receiving their annuity. They may begin to draw the annuity on or after the date they reach age 65.¹

A surviving spouse or children of a member may receive a benefit under MCLA 38.819c; MSA 27.125(19.3) if the "member who has 8 or more years of service credit *dies while in office or if a member dies following his retirement.*" (Emphasis added) As the Supreme Court stated in *Dussia v Monroe County Employees' Retirement System*, 386 Mich 244, 249; 191 NW2d 307, 310 (1971):

"It is a cardinal rule that the legislature must be held to intend the meaning which it has plainly expressed and in such cases there is no room for construction, or attempted interpretation to vary such meaning."

A member who has died after leaving the bench prior to receiving retirement benefits is not within the category of a member who died "in office" or "following his retirement." In view of the plain language of the statute, the surviving spouse or children of such a member is not entitled to benefits under MCLA 38.819c; MSA 27.125(19.3). Once the member begins to draw his or her annuity, i.e., officially retires, the spouse or children would then become eligible under MCLA 38.819c; MSA 27.125(19.3).

The Supreme Court held in *Campbell v Judges' Retirement Board*, 378 Mich 169; 143 NW2d 755 (1966) that a member's right to benefits in the Judges' Retirement System was contractual in nature. Any rights acquired under the contract may not be constitutionally impaired by subsequent statutory amendment.² As a result of *Campbell, supra*,

"... a retired circuit judge who was a member of the judges' retirement system during the time that the judges' retirement act contained the provision that retired circuit judge members are to receive a retirement annuity of one-half the salary currently being paid circuit judges by the state, is entitled by his contract with the state to receive a retirement annuity of one-half the salary currently being paid to circuit judges by the state even though the statute was amended prior

¹ Effective May 27, 1976, MCLA 38.813a; MSA 27.125(13.1) was amended by 1976 PA 134 to reduce, *inter alia*, the minimum age for drawing a deferred retirement to 60 years.

² Also see Const 1963, art 9, § 24 and MCLA 38.819c(4); MSA 27.125(19.3) (4).

to the time of his retirement to remove the so-called escalator clause and to provide a retirement annuity of one-half of the salary paid such member by the state at the time of his retirement." OAG, 1969-1970, No 4677, p 81, 84 (September 5, 1969)

As noted earlier, the spouse's benefits under MCLA 38.819a; MSA 27.125(19.1) and MCLA 38.819b; MSA 27.125(19.2) were repealed by 1974 PA 337. Spouses of members of the retirement system prior to the repeal nevertheless retain their right to those spousal benefits. Thus, such a spouse may, if qualified, receive the benefit provided by MCLA 38.819a; MSA 27.125(19.1) or MCLA 38.819b; MSA 27.125(19.2), if his or her spouse had died prior to actually drawing a deferred annuity.

"2. A member who retired October 17, 1974, prior to enactment of Act 337, P.A. 1974, died May 29, 1975, after the enactment of Act 337, P.A. 1974. His spouse is under age 55 and has a dependent child of the Judge under age 19. She is being paid a benefit of ½ the amount the Judge received.

"Is the spouse eligible for a benefit under the provisions of Section 19c, the benefit terminating upon her death? If the spouse dies, is the child eligible for a benefit under Section 19c?"

It is a settled rule of statutory construction that a statute is only prospective in operation unless a contrary intent that the statute apply retroactively clearly appears from the context of the statute. *In re Davis Estate*, 330 Mich 647; 48 NW2d 151 (1951); *Olkowski v Aetna Casualty & Surety Company*, 53 Mich App 497, 503; 220 NW2d 97, 100, aff'd 393 Mich 758; 223 NW2d 296 (1974). In the instant situation, the retired Judge died after the effective date of 1974 PA 337, which added MCLA 38.819c; MSA 27.125(19.3) to the judges' retirement act. Thus, the application of this statutory provision to the spouse and child of the deceased Judge would be prospective. It is, therefore, my opinion that the spouse and child cited in your second question are eligible for the benefits provided pursuant to MCLA 38.819c; MSA 27.125(19.3).

"3. Is the spouse of a judge who retired and died prior to the enactment of Act 337, P.A. 1974, and who is presently receiving a benefit, entitled to receive the benefit after remarriage?"

Both MCLA 38.819a; MSA 27.125(19.1) and MCLA 38.819b; MSA 27.127(19.2) mandated the termination of spousal benefits upon the recipient's remarriage. However, 1974 PA 337 repealed both those statutory provisions and added MCLA 38.819c; MSA 27.125(19.3), which provides for spousal benefits without any termination of such benefits upon remarriage. The application of MCLA 38.819c; MSA 27.125(19.3) to spouses who remarried after the effective date of 1974 PA 337 would be prospective. It is, therefore, my opinion that the spouse in this instance is entitled to receive a spousal benefit after remarriage.

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