



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL

August 13, 1973

Honorable Everett L. Anschutz  
Executive Secretary  
Employees Retirement System of Texas  
Box 12337 Capitol Station  
Austin, Texas 78711

Opinion No. H- 85

Re: Effect, if any, of Senate  
Bill 123 on benefits being  
paid or to be paid to minor  
children of deceased em-  
ployees, and related ques-  
tions under Article 6228f,  
V. T. C. S.

Dear Mr. Anschutz:

Your letter requesting our opinion advises:

"The State Employees Retirement System of Texas is a constitutional state agency (Article 16, Section 62a, Constitution of Texas). The Board of Trustees of this System is charged with the responsibility of administering the State Employees Retirement Act (Article 6228a, Vernon's Texas Civil Statutes). In addition to its other duties, the Board is also given responsibility for the administration of death benefit payments to the surviving spouses and minor children of deceased law enforcement officers and firemen. (See Article 3, Section 51d, Constitution of Texas; and Article 6228f, Vernon's Texas Civil Statutes.)"

You ask four specific questions, the first two of which having to do with the effect of Senate Bill 123, 63rd Legislature (The Eighteen Year Old Bill) are:

"1. Does Senate Bill No. 123 disqualify a person eighteen (18) years of age or over from continuing to receive the monthly annuity as the

surviving minor child of the deceased law enforcement officer or fireman who died prior to the effective date of Senate Bill No. 123? If your answer is in the affirmative, on what date must payments be suspended?

"2. Does Senate Bill No. 123 disqualify a person eighteen (18) years of age and over from receiving benefits where the law enforcement officer or fireman dies on or after the effective date of Senate Bill No. 123?"

Section 51-d of Article 3 of the Constitution provides that the Legislature shall have the power to provide for the payment of benefits to "the surviving spouse and minor children" of officers of police and fire departments.

Article 6228f governs assistance paid to the survivors of law enforcement officers, etc., under that provision. It defines "minor child" as meaning a child who, on the date of the violent death of any person covered by the Act, has not reached the age of twenty-one years. It provides in § 3 that the State will pay to the surviving spouse certain benefits and, if he is survived by a minor child or minor children the State will pay the benefits to guardians of the children according to the number of minor children surviving, "provided, that when any child entitled to benefits under this Act ceases to be a minor child as that term is defined herein, his entitlement to the benefits shall terminate. . . ."

In our opinion there is no escape from the conclusion that the statute confers rights and benefits dependent upon legal infancy. Indeed, in the case of children of law enforcement officers, the statute would be unconstitutional if benefits were extended on a different basis, since Article 3, § 51-d of the Constitution authorizes benefits for children only if they are minors, i. e., if they are incapacitated because of legal infancy.

The definition contained in Article 6228f, § 2(a)(7) must be viewed in that context. Again, we must construe "has not reached the age of 21 years"

to mean "has not been emancipated from disabilities of minority", else the statute and the Constitution conflict. Were it necessary to declare the existence of a conflict, the statutory language of Art. 6228f could not control, and because persons 18 years of age or older will be emancipated by Senate Bill 123 from such disabilities after August 27, 1973, on that day they will cease to be minors within the meaning of Articles 6228a and 6228f, V. T. C. S., in our opinion. See Attorney General Opinion H-82(1973).

Your remaining questions are:

"3. May this System make payments directly to any qualified surviving minor or must payments be made through (1) the natural guardian, (2) a Court-appointed guardian, or (3) some other qualified adult?"

"4. Will marriage of the minor or adoption of such minor disqualify the minor for future payments under Article 6228f, Vernon's Texas Civil Statutes?"

Minors are legal infants, without legal capacity. They are not legally qualified to act on their own behalf, generally speaking, and have no capacity to give a binding discharge for obligations due them. Hence payment of a debt to a minor will not necessarily constitute a discharge of the debt owing the minor. It ordinarily can be legally received on behalf of the minor only by a court-appointed guardian of the minor's estate. See Silber v. Southern National Life Ins. Co., 326 S. W. 2d 715 (Tex. Civ. App., 1959, writ refused).

The Board of Trustees of the State Employees Retirement System of Texas is not presently authorized, in our opinion, to pay Article 6228f benefits due minors to anyone except a person designated by a court to receive them, e.g., a court-appointed guardian of the minor's estate or a guardian appointed to receive governmental funds. See Probate Code §§ 109, 184, 228, 246, V. T. C. S. See also Article 1994, V. T. C. S.

Article 6228f § 3 says the benefits payable to children under that statute may be paid to "the duly appointed or qualified guardian or other legal representative of each minor child." We do not think these passages were intended to displace the law otherwise applicable to the property of minors.

Even natural parents are not authorized to control and manage the property of their children without specific court or statutory authority. Silber v. Southern National Life Ins. Co., supra. Such restrictions are imposed for the protection of the children. In the absence of a specific legislative intent that such protections be abrogated or of an irreconcilable conflict between the statutes (neither of which we find), we think the courts will hold that benefits for children payable under Article 6228f may not be properly paid to any person other than one lawfully designated by the court to receive such payment.

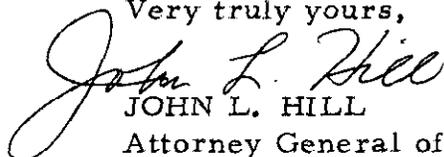
We answer your last question in the affirmative, but with a caveat regarding adoption.

The same reasoning that requires the disqualification of 18 year old children when they are no longer protected by "legal infancy" status also applies to married persons, regardless of their ages. See Ex parte Williams, 420 S. W. 2d 135 (Tex. 1967); Pittman v. Times Securities, 301 S. W. 2d 521 (Tex. Civ. App., 1957, no writ). And the children of a deceased law officer who have been adopted by someone else cease to be his children. They would not be entitled to continue receiving benefits. See Article 46a, § 9, Vernon's Texas Civil Statutes; Patton v. Shamburger, 431 S. W. 2d 506 (Tex. 1968).

#### SUMMARY

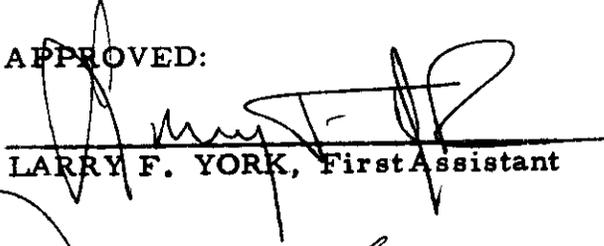
Persons cease to be minors within the meaning of Article 6228f, V. T. C. S., when they are no longer under disabilities as "legal infants". After the effective date of Senate Bill 123, 63rd Leg., persons at least 18 years old will not be legal infants. Persons who are married, regardless of their age, have the status of adults. Benefits due minors under the statute cannot properly be paid directly to them but must be paid to the persons duly appointed by a court to receive them. Marriage or adoption of a minor will disqualify him from future payments under Article 6228f, V. T. C. S.

Very truly yours,

  
JOHN L. HILL

Attorney General of Texas

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