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NO.
STATE OF NEBRASKA
OFFICIAL
JUN 13 1995
DEPT. OF JUSTICE

DATE: June 9, 1995

SUBJECT: School Retirement System; Qualified Domestic Relations Order, Successive Interests of Alternate Payees

REQUESTED BY: James S. Cashin, Director
Public Employees Retirement Systems

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

You have asked certain questions regarding the proper application or disposition of retirement benefit amounts paid to an "alternate payee" under a qualified domestic relations order ("QDRO") upon demise of the alternate payee. As you have noted, provisions of the School Employees Retirement Act, Neb. Rev. Stat. §§ 79-1501 to 79-1567 (1994), authorize payment of all or a portion of retirement benefits to parties other than the retired member. Retirement benefits may be paid to an alternate payee provided for in "a qualified domestic relations order as that term is defined in Section 414 (p) of the Internal Revenue Code." Neb. Rev. Stat. § 79-1552 (1994).

Under IRC § 414(p)(1), a QDRO is defined as a domestic relations order which recognizes the right to or assigns to an alternate payee the right to receive all or a portion of the retirement benefits. A domestic relations order is a judgment, decree or order which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant. A domestic relations order also includes any decree or order of a court which approves a property settlement agreement.

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Specifically, you ask "(c)an an alternate payee assign his/her stream of benefits to a beneficiary of his or her choosing, or does the benefit after the alternate payee dies revert back to the member?" Generally, an alternate payee, spouse, former spouse, child or other dependent, cannot assign "his/her stream of benefit payments to a beneficiary of his/her choosing" unless authorized or so provided for in the domestic relations order. An alternate payee for purposes of a QDRO is defined in IRC § 414(p) as follows:

> ALTERNATE PAYEE DEFINED. - The term "alternate payee" means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of the benefits payable under a plan with respect to such participant.

The domestic relations order may provide for more than one alternate payee for child support or for purposes of division of property. As we have previously pointed out, a court has broad discretion in the disposition of pension rights in domestic relations proceedings. *See e.g. Kullbom v. Kullbom*, 209 Neb. 145, 306 N.W.2d 844 (1981); *Sonntag v. Sonntag*, 219 Neb. 583, 365 N.W.2d 411 (1985); Informal Op. Att'y Gen. No. I94-001, January 10, 1994. Consequently, it is the terms and provisions of the domestic relation order that are necessarily looked to for determining whether there is a successor alternate payee entitled to receive the benefit amounts.

You also inquire whether a benefit amount continues to the alternate payee's estate or reverts back to the plan member. The answer to this question is directly dependent on the provisions of the domestic relations order. We have not been furnished a copy of the court decree or order so we have no specific information or knowledge regarding the provisions of the order. It is the domestic relations order that provides for the interest of the alternate payee and the number or amount of payments the payee is entitled to. Assuming that the only interest of the alternate payee under the domestic relations order is a life interest, then the payments would terminate upon death and revert to the retired member. The question(s) you have asked is necessarily determined on the facts and circumstances of each case and upon the provisions of the applicable domestic relations order. In summary, it is our conclusion that the payments in question under the facts you describe would revert to the retired member if the QDRO makes no

other provision for disposition of the benefit amounts after the alternate payee passed away.

Sincerely yours,

DON STENBERG
Attorney General

Fredrick F. Neid
Assistant Attorney General

Approved By:

Attorney General

21-697-6.op

NEBRASKA PUBLIC EMPLOYEES RETIREMENT SYSTEMS

May 11, 1995

The Honorable Donald B. Stenberg
Nebraska State Attorney General
State Capitol, Room 2115
Lincoln, NE 68509

RE: Qualified Domestic Relations Orders and
Rights of Alternate Payees

Dear Mr. Stenberg:

As administrator of the Public Employees Retirement Systems, I review divorce decrees submitted to our office concerning the possible rights of alternate payees to receive a portion of members' retirement benefits.

My question pertains to the alternate payee's right to a benefit in the event or his/her death. Can an alternate payee assign his/her stream of benefit payments to a beneficiary of his/her choosing, or does the benefit after the alternate payee dies revert back to the member?

For an example, the plan member takes a Life Only option for $1,000 per month. We recognize a QDRO that gives the alternate payee 30 percent ($300) of the $1,000 monthly benefit. If the alternate payee dies before the member, does the monthly $300 payment continue to the alternate payee's estate or revert back to the plan member?

Section 79-1552 refers to school retirement benefits and their exemption from assignment except in cases of a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code. Neither section 79-1552 nor section 414(p) refers to the issue of assignability of an alternate payee's benefit in the event of his/her death. I have enclosed copies of these sections for your review.

If you have any questions, please contact me.

Sincerely,

Jim Cashin

James S. Cashin, CLU
Director

JSC:jh

Enclosures

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