

August 20, 1943

Mr. Edwin C. Pendleton, Executive Secretary  
Arizona Teachers' Retirement System  
507 Luhrs Tower  
Phoenix, Arizona

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Dear Mr. Pendleton:

Receipt is acknowledged of your letter of August 4, 1943, in regard to the following deceased members of the System who died during the month of July, 1943:

Fred J. Curtis, died July 17, 1943,

Florence K. Smith, died July 30, 1943.

These persons being pensioners under the old law (section 54-1008, Arizona Code, 1939), their status was fixed under the old law. Upon its repeal by chapter 61, Session Laws, 1943, the pension in each case was carried forward under the new law, section 33 (now section 54-1733, Arizona Code, 1939, as amended), which reads:

"All pensions in force on the date the retirement system is established, payable to teachers retired under the provisions of section 54-1008, Arizona Code of 1939, shall be continued and paid thereafter from the accrued liability fund."

The basis of the pension under the old law is not changed, but is "continued and paid" under the new law.

Under date of August 1, 1942, we rendered an opinion on the old law, as follows:

"We have your letter of August 9th relative to the right of an administrator of the estate of a deceased teacher who had been drawing a pension prior to death, to file a claim for a portion of the monthly installment of the annual pension when the death occurred at a time between the dates in which the monthly installments are payable.

It is our opinion that in such case the personal representatives do not have a claim against the state. The pension is payable in monthly installments during the lifetime of the recipient. The monthly installment does not accrue from day to day at so much per diem, but becomes payable at a certain time in its entirety. There is nothing due the pensioner until that day arrives. If he or she dies

Aug. 20, 1943

between the dates for payment of the monthly installment the heirs as representatives have no claim against the state for the elapsed portion of the month. "

However, a different situation is presented in your letter of the 4th instant, with reference to the payments due these pensioners for the month of June, 1943. When the June payment became due and payable to Fred J. Curtis and Florence K. Smith they were alive and entitled to it; but due to the uncertainties arising from the change from the old law to the new system, actions in court were had to clarify some of the doubtful points. This was due to no fault of the pensioners.

In the case of Arizona Teachers' Retirement System vs. Ana Frohmler, State Auditor, No. 4657, decided by the Supreme Court July 31, 1943, the court emphasized the use of the word "continued" (with relation to pensions under the old law) as the word is used in the new statute.

Under the old law, which has in no way been changed under the System as to pensions in force on the date the retirement system was established, the persons named were entitled to be paid their June 1943 installment before their death. Having been paid already the sum of \$20.00 of the June, 1943 installment, the administrator of the estate of each of the deceased pensioners named is entitled to receive the balance of \$30.00 for the unpaid portion of the correct sum due for the month of June, 1943, to be paid out of the "accrued liability fund", of the System.

As to the month of July, 1943, no installment had accrued, and become payable, during the lifetime of the said deceased pensioners, and consequently none can be paid to anyone for any portion of the said month of July.

Respectfully,

JOE CONWAY  
Attorney General

THOMAS J. CROAFF  
ASSISTANT Attorney General

EARL ANDERSON  
Chief Assistant  
Attorney General