

File No. 96818

December 31, 1956

Mr. Philip Wagner
Executive Secretary
Employees Retirement System
City Hall
Baltimore - 2, Maryland

Dear Mr. Wagner:

You have inquired whether or not the amount of a possible overpayment in salary paid to Mrs. Anna M. Arthur, deceased member of the City Council, can be recovered by the City of Baltimore from the annuity savings account of Mrs. Arthur in the Employees Retirement System. You state that her sister, Mary Morse, her designated beneficiary, has filed a claim for the ordinary death benefit which includes the amount of the annuity savings account.

It is the opinion of this office that the City cannot withhold from this member's annuity savings account any amount to be applied to an overpayment in her salary. Our reasons for this opinion follow.

Section 6 (8) of the Pension Ordinance provides in substance that the ordinary death benefit shall be paid, upon proper proofs of death of a member, "to his estate or to such person having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the Board of Trustees." This is interpreted to mean that if a valid beneficiary is designated, the benefit is paid to that beneficiary, and if the designation fails, or there is none, the benefits are paid to the deceased member's estate. It is assumed that there is no question as to the validity of the designation of beneficiary, or the claim made by the beneficiary. Therefore, upon death of the member, the beneficiary became entitled to the benefits payable, including the annuity savings account.

A somewhat similar, if not a stranger set of facts was presented in the case of Abrahams vs. Wilson, 3 A 2d 1016, wherein the City of Philadelphia attempted to recover from the contributions paid by a deceased member to the City pension system, an amount equal to the shortage in his accounts at the time of his death. It was found as a fact by the