

Mr. Philip Wagner, Executive Secty., Employees Retirement System (cont'd)

Court that the deceased member had misappropriated the City funds to his own use. The pension law provided that upon the death of a member not pensioned, the total amount of contributions paid by him shall be paid over to the estate of the deceased employee. In holding that the City of Philadelphia could not recover from the accumulated contributions the amount embezzled, the Pennsylvania Superior Court on appeal held that the City was merely a general creditor, but on the other hand, the right of the estate (through its Administratrix) was given under statutory provisions. The Court went on to say that the pension board had the duty of administering the pension fund and that the contributions of employees constituted a single fund impressed with a trust for specific purposes. At p. 1019, the Court concluded:

"* * * this fund is the corpus of a trust for the sole purpose of providing retirement pay to the employees or their estates, and, as trustee, the City cannot set off its own claim against the claim of one entitled to a sum for contributions made by the intestate to the board."

The above principle of law would be persuasive in construing the Baltimore City Pension Ordinance, in that under Section 7, the Board of Trustees are constituted the Trustees of the several funds created under the Ordinance. One of these funds is the "Annuity Savings Fund", as set forth in Section 8 (1), as amended by Ordinance No. 899 of 1954, which begins by stating:

"The Annuity Savings Fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities."

Thus, as in the Pennsylvania case, contributions of members are paid into one single fund, known as the Annuity Savings Fund, over which the Board acts as trustee, and payments from this fund can be made by the Trustees only for the purposes of the Pension Ordinance. Payment for any other purpose would be a breach of their trust.

This office, in an opinion to the Central Payroll Bureau dated December 13, 1954 (Opinions of City Solicitor, Vol. 50, p. 71) held that when an employee is given vacation in advance of his earning the same, and then leaves City employ before he makes up credit for this advanced vacation, the Payroll Bureau cannot have deducted from his