

# MAINE STATE LEGISLATURE

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February 26, 1976

William G. Blodgett, Exec. Dir.

Maine State Retirement System

Donald G. Alexander, Assistant

Attorney General

Benefit entitlement under 5 M.R.S.A. § 1124

Your memorandum of January 30, 1976, poses a question of whether, where a member dies of injuries received in the line of duty and has designated a son as beneficiary, the member's wife at time of death should have been offered a survivors benefit pursuant to 5 M.R.S.A. § 1124-1-B.

The answer is No. Section 1124-1-B directs that the death benefit payment be made to "the first of certain designated beneficiaries." The designated beneficiaries are then listed as spouse, child or children of the member or former member, mother or father, and mother and father. In this case the son was the designated beneficiary and is thus the first designated beneficiary to which payment ought to be made.

The prior case which you address and upon which I provided advice orally was a situation where a former spouse had been designated as a beneficiary. In that case the spouse at the time of death, which was different from the former spouse, recovered because "spouse" is defined in 5 M.R.S.A. 1001-24 as a person of the opposite sex either married to or divorced from the member, in that order. Because a person was married to the member at the time of his death, the former wife was no longer eligible as a spouse and thus lost the status of a certain designated beneficiary. Therefore, pursuant to the second sentence of Paragraph b, the spouse at the time of death recovered as the first of the listed persons in the situation where no proper designation was made.

This, however, is not that case. Here there is an eligible designated beneficiary and that person is the only person entitled to the benefits pursuant to § 1124 paragraph 1-B.

DGA:jg