

1980 WL 121211 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 8, 1980

*1 Honorable P. Bradley Morrah, Jr.
314 East Coffee Street
Greenville, South Carolina 29601

Dear Senator Morrah:

As the attorney representing a deceased member of the South Carolina Retirement System and her mother, you have requested an opinion which arises out of the following facts:

1. On December 28, 1976, the member in her will bequeathed all benefits receivable from her contributions to the South Carolina Retirement System to her mother.
2. On February 1, 1980, in an application for disability retirement, the member filed an application for disability retirement, duly notarized, which names her husband as her beneficiary.
3. On April 17, 1980, the member died and the Will mentioned above was probated.

You have asked which person should take the Retirement System benefits.

Section 21-7-210 provides as follows:

No wills or testament in writing of any real or personal property or any clause thereof shall be revocable but by some other will or codicil in writing, or other writing declaring same attested and subscribed by three witnesses as required by Section 21-7-50 . . . '

While there is no question that the naming of a beneficiary is not normally a testamentary act which requires the signatures of three witnesses, it would appear that in this case the testatrix made it so by incorporating it into her will. Moreover, under prior opinions of this Office, a will is sufficient to change the beneficiary of a member's Retirement System survivor's benefits, etc. (unlike the case of many insurance policies which by contract provide that such changes may only be made on specified forms). The above-quoted statute makes no exception for the revocation by non-testamentary means of portions of a will which might have originally concerned non-testamentary matters. It is therefore the opinion of this Office that the filing of a change of beneficiary form, not signed by three witnesses, after the execution of a will which designates a beneficiary, is not effective to change the beneficiary set forth in the will.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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