

Opinion No. 53-5705

March 18, 1953

BY: RICARD H. ROBINSON, Attorney General

TO: Mr. Epigmenio Ramirez, Secretary Public Employees' Retirement Association P. O. Box 925 Santa Fe, New Mexico

{*97} Receipt is acknowledged of your letter dated March 19, 1953, in which you request an opinion as to whether or not the Public Retirement Board shall, under § 3-1613 NMSA, 1941 Comp., Pocket Supplement, approve the application and retirement for superannuation of Mr. Lail D. Sparks, and the annuity to be paid to his designated beneficiary, his wife, Mrs. Diana W. Sparks.

You have enclosed Mr. Sparks' file and we have checked the same carefully and find that although Mr. Sparks filed a Preliminary Application for Retirement, an Election of Optional Annuity Plan, and all the required proof of age, public service and salary, he failed to sign a Final Application before he died.

The pertinent part of sub-section 1 of § 3-1613 NMSA, 1941 Comp.,

P.S., provides as follows:

"Such retirement shall be made upon application of the member or of some one acting in his or {*98} her behalf, and subject to the reasonable rules as the retirement board may prescribe."

It stands to reason that the application must be signed by the applicant. If it is not signed it is not a completed application of the party applying.

Sub-section 1 of § 3-1613 NMSA, 1941 Comp., P.S., reads as follows:

"Heirs or legal representatives to receive amount due member. -- (1) Whenever a member of said association shall die without having received an annuity, an amount equal to the total of his or her accumulated deductions shall be paid on one lump sum to the beneficiaries designated by such member, or if none, to the legal representatives of such member upon the establishment of a valid claim therefor;"

The sub-section above quoted makes it mandatory on the board that whenever any member of the association shall die without receiving an annuity, an amount equal to the total of his or her accumulated deductions shall be paid in one lump sum to the beneficiaries designated by such member, or if none, to the legal representatives of such member upon the establishment of a valid claim therefor.

It is therefore the opinion of this office that since Mr. Lail D. Sparks did not sign and properly make application for retirement before he died, as required under § 3-1613 NMSA, 1941 Comp., P.S., his wife and beneficiary is entitled to the lump sum payment of what he has paid into the association, as provided by § 3-1616, N.M.S.A., 1941 Comp., P.S.

It is further the opinion of this office that the Retirement Board, under §§ 3-1613 and 3-1616 NMSA, 1941 Comp., cannot approve the application for retirement for superannuation of Mr. Lail D. Sparks, and the annuity to be paid to his designated beneficiary, his wife, Mrs. Diana W. Sparks.

We trust that this fully answers your inquiries.

By: Hilario Rubio

Assist. Attorney General