



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2019-1

The Honorable J. Ryan Perkins
Oklahoma Police Pension & Retirement System
1001 NW 63rd Street, Suite 305
Oklahoma City, Oklahoma 73116

January 7, 2018

Dear Chairman Perkins:

This office has received your letter requesting an official Attorney General Opinion in which you ask, in effect, the following questions:

1. Under 11 O.S.2011, § 50-124, may the surviving spouse or child of a deceased “alternate payee,” who is entitled to a portion of a related member’s retirement benefits pursuant to a valid qualified domestic order, receive payments as the “beneficiary” of the deceased alternate payee?
2. Does the definition of “beneficiary” under 11 O.S.2011, § 50-101(13) include a surviving spouse or child of a deceased alternate payee?

I.
BACKGROUND

As its name suggests, the Oklahoma Police Pension and Retirement System (“OPPRS”) “is the state retirement system of Oklahoma police officers.”¹ *Steelman v. Okla. Police Pens. and Ret. Sys.*, 2005 OK CIV APP 91, ¶ 11, 128 P.3d 1090, 1094; *see also* 11 O.S.2011, § 50-112 (setting forth eligibility criteria for participation in OPPRS). Created by statute, OPPRS is “a body corporate and an instrumentality of this state,” the assets of which are held in trust “for the exclusive purpose of providing benefits for the members and beneficiaries of the System.” 11 O.S.2011, § 50-102.1. Further to this purpose, the permissible uses of OPPRS funds are limited by

¹ OPPRS is generally described as a “defined benefit plan [that] qualifies under Section 401(a) of the Internal Revenue Code.” *See* OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM, MISSION STATEMENT (*available at* <https://www.ok.gov/opprs/>, last visited Nov. 19, 2018). “A defined benefit plan provides an employee who retires from the plan a fixed periodic payment based upon a formula. In other words, it provides a pension.” *Stevens v. Fox*, 2016 OK 106, ¶ 2, 383 P.3d 269, 270 (citation omitted). “The plan assets are kept in a pool of assets rather than individual dedicated accounts for employees. The employer bears the entire investment risk and underfunding may result in a myriad of ways including a shortfall in the plan’s investments, insufficient contributions or inaccurate actuarial assumptions.” *Id.*

statute, and include, among other things, investments, pension and injury/disability payments to members, and pension payments to members' beneficiaries. *Id.* § 50-113.

Since the inception of OPPRS as part of the Municipal Code, *see* 1977 Okla. Sess. Laws ch. 256, §§ 50-101 – 50-124, funds held by OPPRS in trust for its members have been explicitly protected under Title 11, Section 50-124(A) from claims of third-party creditors. *See* 11 O.S.2011, § 50-124(A); *see also Rice v. Rice*, 1988 OK 83, ¶¶ 12-13, 762 P.2d 925, 927. Section 50-124(A) also contains the further limitation: “nor shall [OPPRS] payments or any claim thereto be directly or indirectly assigned, and any attempt to assign or transfer the same shall be void.” 11 O.S.2011, § 50-124(A). Finally, Section 50-124(A) explicitly requires that OPPRS funds “shall be held, invested, secured and distributed *for the purposes named* in [Article L of Title 11], *and for no other purpose whatever.*” *Id.* (emphasis added).

While this strict limiting language remains in subsection A of Section 50-124, the Legislature amended the statute in 1993 to add subsection B, a narrow exception to the above limitations. *See* 1993 Okla. Sess. Laws ch. 322, § 5. The exception addresses situations in which an OPPRS member and the member's spouse or former spouse are subject to a qualified domestic order (“QDO”), which is defined as a district court order under Oklahoma domestic relations laws that (i) relates to the division of marital property or provision of child support, and (ii) “creates or recognizes the existence of the right of an alternate payee, or assigns to an alternate payee the right, to receive a portion of the benefits payable” to the OPPRS member. 11 O.S.2011, § 50-124(B)(1)-(2). To qualify as an “alternate payee” under subsection B, the spouse or former spouse must have been married to the OPPRS member for at least 30 consecutive months immediately preceding the filing of the action that led to the issuance of the QDO. *Id.* § 50-124(B)(3). Subsection B also sets forth a number of specific requirements that a QDO must satisfy in order to qualify as an exception to subsection A's general prohibition on the transfer or assignment of an OPPRS member's benefits. *See id.* § 50-124(B)(4)-(7). In addition, the obligation of OPPRS to pay benefits to an alternate payee ceases upon the death of the OPPRS member. *Id.* § 50-124(B)(8).

You ask whether the spouse or child of an individual named in a valid QDO as an alternate payee may receive such payments, as beneficiary of the alternate payee, in the event the alternate payee predeceases the OPPRS member.

II. DISCUSSION

To answer your first question, we look first to the language of Section 50-124. As described above, it is this provision that permits an alternate payee to receive a portion of an OPPRS member's benefits and sets forth the conditions for such receipt. *See* 11 O.S.2011, § 50-124(B). At the same time, Section 50-124 explicitly restricts OPPRS benefit payments such that no third-party creditor or purported transferee or assignee may claim a right to such payments except as specifically provided therein. *Id.* § 50-124(A).

Section 50-124 does not address this issue directly. Indeed, the beneficiaries—whether a child or surviving spouse—of alternate payees are not mentioned at all in the statute. Given the nature of Section 50-124, however, this absence is significant. To understand why, one must consider the

statutes governing OPPRS as a whole. *See Yazel v. William K. Warren Med. Research Ctr.*, 2014 OK 57, ¶ 24, 364 P.3d 1281, 1290 (“Statutory intent is ascertained from the whole act considering its general purpose and objective with relevant provisions together to give full force and effect to each.”). As described above, those statutes contain multiple provisions that explicitly limit the uses of OPPRS funds to those that benefit *members* and *their beneficiaries*. *See, e.g.*, 11 O.S.2011, §§ 50-102.1, 50-113. An alternate payee’s beneficiary, in many cases, will not be a beneficiary of a member.

In the same vein, Section 50-124 explicitly protects payments to OPPRS members from third-party creditors and prohibits and renders void *any* transfer or assignment of such payments or claims thereto, subject to the limited exception set forth in subsection B. 11 O.S.2011, §50-124(A). Under subsection B, a QDO is valid and binding only if it strictly adheres to the requirements set forth therein. *See id.* § 50-124(B)(4)-(6). Those requirements include identifying the name and contact information of the member and alternate payee, but make no mention of beneficiaries of the alternate payee. *Id.* § 50-124(B)(5)(a). Additionally, a QDO must “*not* require [OPPRS] to provide any type or form of benefit, or any option *not otherwise provided under state law* as relates to [OPPRS],” nor “require [OPPRS] to provide increased benefits.” *Id.* §50-124(B)(6)(a), (b) (emphasis added). Because there is nothing in state law that would otherwise permit the beneficiary of an alternate payee to receive OPPRS member benefits upon the death of the alternate payee, it follows that such a provision is not permissible in the context of a QDO.

Given the detail to which the Legislature spelled out the requirements and limitations of a QDO, and the concomitant rights of an alternate payee, the Legislature’s omission of beneficiary rights of the child or surviving spouse of an alternate payee must be seen as intentional. “Only when the circumstances clearly indicate that in enacting the statute the legislature has overlooked something will [a] court apply rules of statutory construction in an effort to clarify and make sensible an act’s purview.” *Wylie v. Chesser*, 2007 OK 81, ¶ 19, 173 P.3d 64, 71 (quotation and citation omitted). “However, to enable a court to insert in a statute omitted words or read it in different words from those found in it, the intent thus to have it read must be plainly deducible from other parts of the statute.” *Id.* (quotation, emphasis, and citation omitted). An intent to include a surviving child or surviving spouse of an alternate payee cannot be found within the statutes governing OPPRS. Accordingly, the child or surviving spouse of a deceased alternate payee may not receive beneficiary payments from OPPRS to which the deceased alternate payee was entitled. Such payments cease upon the death of the alternate payee.²

As to your second question, the OPPRS definition of the term “beneficiary” is clear and unambiguous; it includes only “a member’s surviving spouse or any surviving children, including biological and adopted children, at the time of the member’s death.” 11 O.S.2011, § 50-101(13).

² It should be noted that, unlike the OPPRS statutes, the statutes governing the Oklahoma Firefighters Pension and Retirement System explicitly address this issue. Under those statutes, which are otherwise similar to those governing OPPRS, “[t]he obligation of the System to pay an alternate payee pursuant to a [QDO] *shall cease upon the earlier of the death of the related member or the death of the alternate payee.*” 11 O.S.2011, § 49-126(B)(10). In the event the alternate payee predeceases the related member, the alternate payee’s rights under the QDO “shall cease and the payments of benefits to the member shall be reinstated.” *Id.*

This definition plainly does not include an alternate payee, the surviving spouse of a deceased alternate payee, or the surviving child of a deceased alternate payee.³

It is, therefore, the official Opinion of the Attorney General that:

- 1. Upon the death of an alternate payee who was entitled to a portion of member benefits as set forth in a valid qualified domestic order pursuant to 11 O.S.2011, § 50-124, the benefit payments assigned to the alternate payee cease. The surviving spouse or child of the deceased alternate payee is not entitled to continued payments as the beneficiary of the deceased alternate payee.**
- 2. The definition of “beneficiary” under 11 O.S.2011, § 50-101(13) does not include the surviving spouse or child of a deceased alternate payee of the related member under a qualified domestic order issued pursuant to 11 O.S.2011, § 50-124. However, if the surviving child of the deceased alternate payee is also the child of a member, the child *is* a beneficiary of the member.**



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³ To be clear, if the surviving child of a deceased alternate payee is also the child of a member, the child *is* a beneficiary of a member. However, the child's beneficiary status is a result of the child's relationship to the member, *not* the relationship with the alternate payee. 11 O.S.2011, § 50-101(13).