

April 11, 1997

Ms. Piliialoha E. Lee Loy
Chair, Board of Trustees
Employees' Ms. Lee Loy:

Re: The Effect of a Renunciation of Succession Pursuant to Section 560:2-801, Hawaii Revised Statutes, on the Payout of Retirement Benefits

Mr. Stanley Siu, the Administrator, requested our advice as to the effect of a renunciation of succession pursuant to section 560:2-801, Hawaii Revised Statutes, on the payout of death benefits by the Employees' Retirement System of the State of Hawaii ("ERS").

The facts giving rise to the request occurred in 1995. Section 560:2-801 in effect at that time provided for a "renunciation of succession." That section was amended in 1996 to refer to "disclaimer of property interests." While we discuss the law as it existed when the specific facts arose, our analysis and conclusion would be the same under the law as it exists on the date of this letter, except for the amended requirements and subsection designations.

The facts, as we understand them, are that an ERS member passed away while in state service. This member had designated the member's parents as co-beneficiaries to receive all benefits payable from the ERS in the event of this member's death. One of the co-beneficiary parents passed away approximately six weeks after the member's death. The deceased parent's personal representative and special administrator of the deceased parent's estate filed a timely renunciation of succession in the appropriate state court. ([top](#))

The effect of a renunciation of succession, pursuant to section 560:2-801, Hawaii Revised Statutes, is that the renouncing party, in this case the deceased parent, is deemed to have predeceased the member from whom the retirement benefits would have been received. Thus, the member's death benefits should be paid to the sole remaining beneficiary.

The ordinary death benefit for the pertinent membership class is specified in section 88-84(a), Hawaii Revised Statutes, which provides in pertinent part as follows:

§88-84 Ordinary death benefit. (a) Upon receipt of proper proof of a member's death in service, there shall be paid to the member's designated beneficiary an ordinary death benefit consisting of:

- (1) The member's accumulated contributions and, if no pension is payable under section 88-85, in addition thereto an amount equal to fifty per cent of the compensation earned by the member during the year immediately preceding the member's death if the member had at least one year but not more than ten full years of credited service, which amount shall increase by five per cent for each full year of service in excess of ten years, to a maximum of one hundred per cent of the compensation ([top](#))

. . . .

Pursuant to section 88-84(a) this deceased member's co-beneficiaries are entitled to approximately \$70,200.

Section 560:2-801, Hawaii Revised Statutes, part of Hawaii's Uniform Probate Code, provided in 1995 in pertinent part as follows:

§560:2-801 Renunciation of succession. (a) A person or the representative of an incapacitated or protected person, or the personal representative of a deceased person with the written consent of all affected beneficiaries, who is an heir, devisee, grantee, donee, surviving joint tenant, person succeeding to a renounced interest, beneficiary under a

testamentary instrument or nontestamentary instrument, who has not accepted the property or interest to be renounced, or appointee under a power of appointment exercised by a testamentary instrument, or a nontestamentary instrument, may renounce in whole or in part the right of succession to, or transfer to him of, any property or interest therein, including a future interest, by filing a written renunciation under this section. ([top](#))

. . . .

The instrument shall (1) describe the property or interest renounced, (2) declare the renunciation and extent thereof, and (3) be signed by the person renouncing.

(b) (1) An instrument renouncing a present interest shall be filed not later than nine months after the death of the decedent or donee of the power.

. . . .

(3) The renunciation shall be filed in the court of the judicial circuit in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. . . .

(c) Unless the decedent or donee of the power has otherwise provided, the property or interest renounced devolves as if the person renouncing had predeceased the decedent A renunciation relates back for all purposes to the date of the death of the decedent or the donee of the power.

Pursuant to section 560:2-801(a), an heir, or the heir's personal representative "with the written consent of all affected beneficiaries," may renounce the right of succession of, or transfer to the heir, any property by filing a written renunciation of succession which complies with section 560:2-801. The deceased parent's renunciation of succession provides in pertinent part as follows: ([top](#))

That . . . Personal Representative for the estate of [the deceased parent], desires to renounce, and by this document does renounce all of the estate's right, title and interest in any asset, or that part of an asset, within the estate of [the deceased ERS member] which is "income in respect of a decedent" (as defined for federal income tax purposes as of the date of [the deceased ERS member's] death) including, but not limited to the following assets whether such asset would vest by "operation of law" and/or intestate succession and/or as a result of a disclaimer(s), (whether qualified or non-qualified) by other persons having an interest in any part of the estate of [the deceased ERS member]. [Emphasis in original.] ([top](#))

The renunciation then lists the deceased member's retirement account with the ERS. Thus, the deceased parent's renunciation of succession instrument complies with the requirements of section 560:2-801, because it describes the interest renounced, declares the renunciation and the extent thereof, is signed by the person renouncing, includes the written consent of all affected beneficiaries, and was timely filed. ([top](#))

Pursuant to section 560:2-801(c)(1), the renounced interest must devolve as if the renouncing party had predeceased the deceased ERS member. When an ERS beneficiary predeceases an ERS member, the effect of the death is specified in section 88-93, Hawaii Revised Statutes, which provides in pertinent part as follows:

§88-93 Named beneficiaries by active members; effect of marriage, divorce, or death. All nominations by written designation of beneficiaries shall become null and void when:

(1) The beneficiary predeceases the member;

. . . .

Any of the above events shall operate as a complete revocation of such designation

The term "beneficiary" is defined by section 88-21, Hawaii Revised Statutes, as "the recipient of

any benefit from the system or, as the context may indicate, the natural person or persons designated by a member to receive the benefits payable in the event of the member's death."
([top](#))

Section 88-93 provides that a member's designation is null and void when the beneficiary predeceases the member. Because of the operation of the renunciation of succession pursuant to the Uniform Probate Code, the beneficiary, in this case, the deceased parent, is deemed to have predeceased the member. Therefore, the only remaining beneficiary is the remaining parent and the ERS may pay the member's benefits to the sole remaining beneficiary. ([top](#))

Very truly yours,

Katherine C. Desmarais
Deputy Attorney General

APPROVED:

Margery S. Bronster
Attorney General