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FILE NO. S-1195

PENSIONS:

Whether Accidental Death Benefits
Can be Paid When the Industrial
Commission Approves a Settlement
Agreement.

Mr. Michael L. Mory
Secretary, State Employees'
Retirement System of Illinois
1201 South Fifth Street
Springfield, Illinois 62706

Dear Mr. Mory:

I have your letter wherein you ask whether the Illinois Industrial Commission's approval of a settlement agreement between the survivors of an Illinois Retirement System member and the member's employer constitutes an adjudication by the Commission that the member died while in the performance and within the scope of his duties. Before the System may pay accidental death benefits to a member's sur-

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vivors, the Pension Code requires an adjudication or ruling that the member died while in the performance and within the scope of his duties. Section 14-167 of the Illinois Pension Code (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 14-167) provides in pertinent part as follows:

"Before the board takes any action on an application for an accidental disability or accidental death benefit, adjudication by the Industrial Commission of Illinois or a ruling by the agency responsible for determining the liability of the State under the Workmen's Compensation Act or the Workmen's Occupational Diseases Act shall be had on a claim to establish that the disability or death was incurred while in the performance and within the scope of his duties, under the terms of the Illinois Workmen's Compensation Act or the Workmen's Occupational Diseases Act, whichever applies. The system shall make payment of its benefit only if the claim is found compensable under either of those Acts.

* * *

(emphasis added.)

You state in your letter that the System is deferring further payment of accidental death benefits to the survivors of a Retirement System member. The member's survivors and his employer entered into a settlement agreement that was approved by the Industrial Commission. The first paragraph of the agreement stipulates that the member "was killed in an accident

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that arose out of and in the course of employment".

The paragraph in the agreement titled "Terms of settlement and reasons therefor" reads in part as follows:

"It is agreed by and between the parties that respondent shall pay to Petitioner the sum of \$2,000.00 in full and complete settlement of any and all claims arising under the Workmen's Compensation Act of the State of Illinois. The reason for the settlement and compromise set forth herein is that Respondent denies compensability in this case and substantial basis exists for disputing same. * * * "

The employer's dispute of the claim's compensability was the reason why the parties chose to enter the settlement; it does not alter the employer's admission in the first paragraph that the member was killed within the scope of his duties.

Since the settlement agreement was approved by the Commission, it was, in legal effect, an award. Dyer v. Industrial Commission, 364 Ill. 161. As an award, the agreement was a final and conclusive adjudication of all conditions and issues involved in establishing the right to compensation under the Workmen's Compensation Act. (Michelson v. Industrial Commission, 375 Ill. 462; Franklin County Min. Co. v. Industrial Commission, 322 Ill. 555.) One of the issues

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involved in establishing the right to compensation is whether the employee's death or injury arose out of and within the scope of his duties (Edmonds v. Industrial Commission, 350 Ill. 197). The Industrial Commission can only approve settlement agreements relating to deaths or injuries arising out of and within the scope of an employee's duties (Walsh v. Central Cold Storage Co., 324 Ill. App. 402). Before the Industrial Commission approves a settlement agreement, the employer must admit, or the Commission must determine, that the employee's injury or death was incurred while in the performance and within the scope of his duties (Weymer v. Industrial Commission, 404 Ill. 271).

The member's employer admitted in the settlement agreement that the member was killed within the scope of his duties. The Commission's approval of the agreement gave it the legal effect of an award. As an award, the Commission's approval of the agreement was, therefore, a final and conclusive adjudication by the Commission that the member was killed while in the performance and within the scope of his duties. It is thus my opinion that the Commission-approved settlement

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agreement between the member's survivors and his employer
satisfies the requirement of section 14-167 of the Pension
Code.

Very truly yours,

A T T O R N E Y G E N E R A L