



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-248467

September 10, 1992

Major [REDACTED], USAF, Retired
[REDACTED]

Dear Major [REDACTED]:

This is in response to your correspondence dated April 20, 1992 and August 21, 1992 regarding our decision Master Chief Petty Officer [REDACTED] [REDACTED] Todd USN (Retired) (Deceased), B-230824, Nov. 14, 1988 and how it affects your Survivor Benefit Plan (SBP) coverage for your children and your estate planning.

This is not a decision of the Comptroller General, but the following may be of assistance to you.

In your letter you state that you retired in June, 1990 and were divorced shortly thereafter and that while both your ex-wife and you have joint custody of your minor children, they reside with your former spouse.

You state that at the time of your retirement you chose SBP coverage for your dependent children only and that you would like to have any annuity from your SBF paid to the trustees of a "Living Trust" which you have established for your dependents rather than to your former spouse as natural guardian of your children.

The Defense Finance and Accounting Service (DFAS), in response to your earlier inquiry, advised you that under the Todd decision and other decisions of our Office, the SBP statute did not permit the payment of an annuity to other than the childrens' natural guardian and custodian. Therefore, DFAS advised that since your wife has custody of the children and, in the absence of any evidence that the guardian is not using the annuity payments for the benefit of the children, payment would be made to your wife despite contrary arrangements made in your will or through a trust agreement.

This interpretation is consistent with the law as currently written and while you have raised numerous objections to such an interpretation, barring a change by Congress, we find such a reading to be proper.

While you state that you were not advised of this limitation on your ability to control the disbursement of your SBP annuity at the time you enrolled in the Plan, such a lack of advice does not require that payments be made contrary to the provisions of the SBP and decisions of our Office.

As we stated in Todd, a good acquittance results through payment to a child's natural guardian and custodian in a manner consistent with the laws of the child's state of residence when reasonable assurance is given that the annuity will be used for the child's maintenance, and the matter is otherwise free from doubt. You contend that this assumption means that misuse of the funds can only be proven after the fact and that since you will be deceased when the payments are made there is no one to protect the rights of the dependent children. As noted above, state law generally assumes that the natural guardian of minors will utilize funds for the benefit of the minors and until that assumption is proven wrong, payment is to be made to the natural guardian.

However, if that assumption is proven wrong and a representative payee is duly appointed by a state court, payments would be made to that payee and the government would obtain a good acquittance.

Accordingly, until such time as law is amended SBP annuities are payable in accordance with provisions of 10 U.S.C. §§ 1447-1455 and do not become part of a retired member's estate that can be transferred through a will, trust or other testamentary device.¹

We trust the foregoing will be of some assistance to you.

Sincerely yours,



John J. Mitchell, Jr.
Assistant General Counsel

¹We note that 10 U.S.C. § 1455 was recently amended (Public Law 102-190, § 654(a), Dec. 5, 1991, 105 Stat. 1389) to provide for the issuance of regulations regarding the designation of representative payees for SBP annuitants. Although the regulations have not been issued at the present time, they may provide information that will be of assistance to you although it is doubtful they will authorize the use of testamentary instruments.