September 30, 1998
L-98-21

TO **:** Philip H. Arnold
Chief of Records Analysis and Systems

FROM **:** Steven A. Bartholow
Deputy General Counsel

SUBJECT **:** Legal Widow - California

This is in reply to your June 2, 1998 request for my opinion as to whom, of the railroad employee's three "wives,"should be considered the legal widow of the deceased railroad employee and what is their respective entitlement to benefits under the Railroad Retirement Act. We have reached the following conclusions for the reasons discussed below. Ms. P. A. is not entitled to benefits based on evidence in the file which shows a subsequent marriage after her marriage to Edward. A search of the court records is necessary to determine if a valid marriage certificate is on record for Ms. E. in Oakland, California. Ms. W. L.'s entitlement will end under California law, which presumes the validity of a second or subsequent marriage, if a valid marriage certificate is on record for Ms. E., unless Ms. W. L. presents evidence to rebut the presumption. . Further, the Lord Mansfield Rule was incorrectly applied in 1992 to entitle Coretta and Tammy.

Edward's domicile on his date of death, December 12, 1989, was California. There are three "widows" claiming to be married to the employee at the time of his death. They are as follows:

1) W. L. - Filed Form AA-18 on May 28, 1992 on behalf of herself and two minor children: Tammy (born October 10, 1978) and Coretta (born September 29, 1980). The marriage certificate in the file indicates the marriage took place in Louisiana on December 13, 1960. Form AA-18 indicates that W. and Edward separated on January 31, 1968, when the employee moved to California from Louisiana.

2) P. A. - Filed Form AA-17 and AA-17b for a disabled widow's annuity on December 11, 1997. The marriage certificate in the file indicates the marriage took place in Reno, Nevada on January 13, 1973. Form AA-17 indicates that P. and Edward were separated in 1978, but were still married at the time of the employee's death. Records searched in Alameda and San Francisco counties in California did not produce a divorce certificate. P. has

submitted a "good faith" statement regarding her marriage as previously instructed by the Bureau of Law. Her application for divorced widow's annuity is pending this decision regarding her eligibility.

3) E. - The death certificate of the employee from the State of California lists E. as the employee's widow. E. was the informant of the employee's death. A statement in the file from E. indicates she married the employee on February 4, 1982 in Oakland, California. It also indicates that she was married to the employee at the time of his death and did not have any knowledge regarding the employee's prior marriages until after his death. The marriage certificate is not in file and E. has yet to file any application for benefits.

Section 2(d)(4) of the Railroad Retirement Act provides that for purposes of determining whether an applicant is the wife of the employee, the Board shall apply the rules set forth in section 216(h) of the Social Security Act. Section 216(h), in turn, provides in part:

> (1)(A)(i) An applicant is the wife * * * of a fully or currently insured individual for purposes of this title ***if such insured individual is dead, the courts of the State in which he was domiciled at the time of death * * * would find that such applicant and such insured individual were validly married * * * if such insured individual is dead, at the time he died.
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> (ii) If such courts would not find that such applicant and such insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the wife * * * of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife * * * of such insured individual.
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> (B)(i) In any case where under subparagraph (A) an applicant is not (and is not deemed to be) the wife * * * of a[n] * * * insured individual * * * but it is established to the satisfaction of the Commissioner of Social Security that such applicant in good faith went through a marriage ceremony with such individual resulting in a purported marriage between them which, but for a legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage, then * * * such

> purported marriage shall be deemed to be a valid marriage. Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife ***of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of death of the insured individual***.
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> (iv) For purposes of this subparagraph, a legal impediment to the validity of a purported marriage includes only an impediment (I) resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or (II) resulting from a defect in the procedure followed in connection with such purported marriage.

In accord with section 2(d)(4) of the Railroad Retirement Act and section 216(h) of the Social Security Act, regulations of the Board provide that an individual may qualify for a spouse's annuity as the wife of the employee if the State of the employee's domicile would recognize that the claimant and the employee were validly married, or if a deemed marriage is established. See 20 CFR 222.11, 222.12, and 222.14.

The railroad employee was domiciled in California at the time of his death. California courts apply a presumption that a second or subsequent marriage is valid. Moran v. Superior Court in and for Sacramento County, 100 P.2d 1096, 1098 (Ca., 1940).

The presumption may be rebutted "by evidence that the former spouse of one of the parties is living and that neither a divorce nor an annulment of the former marriage was ever procured." Id. See also Hamrick v. Hamrick, 260 P. 2d 188, 193 (Ca., 1953),(when a person has entered into two successive marriages, a presumption arises in favor of the validity the of second marriage and the burden is upon the party attacking the validity of the second marriage to prove that the first marriage had not been dissolved by the death of a spouse or by divorce or had not been annulled at time of second marriage). In order to rebut the presumption of validity of the second marriage, the first spouse needs to show that her marriage remains undissolved. Spearman v. Spearman, 482 F. 2d. 1203,1205 (5th Cir. 1973). To make the required showing, the first spouse needs to examine the records of those jurisdictions in which either she or her husband have been domiciled. Id., at 1205.

Evidence in the file includes a valid marriage certificate indicating that W. and Edward were married on December 13, 1960 in Louisiana. A May 28, 1992 memorandum from the

Shreveport, Louisiana field office includes a statement from W. that to her knowledge no divorce had ever been obtained.

Additional evidence in the file suggests that P. A. entered into a subsequent marriage after her marriage to Edward in 1973. Medical records submitted by P. show evidence of a subsequent marriage after 1989, the year of the employee's death. Therefore, P. A.'s claim for a disabled widow's insurance annuity should be denied based on this evidence of her subsequent marriage.

Further, in order to determine who is the legal widow of Edward, a search of the court records in Oakland, California should be conducted to determine if a valid marriage certificate is on record for E., the woman listed as Edward's wife on his death certificate in 1989. According to E., she married the employee in Oakland, California on February 4, 1982. If a search reveals a valid marriage certificate for E., entitlement for W. L., Edward's first wife, will end due to the presumption of the validity of a second marriage under California law unless W. can demonstrate that no order of divorce or annulment was entered in the records of those jurisdictions in which she and Edward resided up until the time of his death. However, if W. cannot make the required showing, her entitlement would end prospectively and no overpayment would be assessed, since the termination of her annuity would result from a change in the legal interpretation of the validity of her marriage. See 20 CFR 261.3. If we obtain a copy of a valid marriage certificate for E. and Edward and W. is unable to provide the evidence needed to rebut the presumption in favor of the subsequent marriage, then E. would be the employee's legal widow.

Your next question concerns whether either of the two other women qualify as a putative widow of Edward according to RCM 4.3 Appendix B2. According to this section of the RCM, an innocent party to a void marriage may acquire inheritance rights as a spouse. According to California law, based on the employee's domicile at the date of his death, a putative marriage is one which has been solemnized in due form and celebrated in good faith by at least one of the parties but which, by reason of some legal infirmity is either void or voidable. Kunakoff v. Woods, 332 P.2d 773, 775 (Ca. 1959).
In light of the evidence of her later marriage, P. would not be a putative widow. Further, a determination of this sort will only be necessary if we obtain both a copy of a valid marriage certificate to evidence E.'s marriage to Edward and evidence from W. to rebut the presumption of the validity of E.'s marriage to Edward. If both of these conditions are met, it appears that E. would be considered to be a putative widow since she has filed a "good faith" statement regarding her marriage to the employee indicating that she was not aware of the employee's prior marriages until after his death in 1989.

It should also be noted that section 5119 of the Omnibus Budget Reconciliation Act of 1990 amended section 216(h)(1)(B) of the Social Security Act to provide that a spouse who married the employee in good faith without knowledge of the impediment of a prior undissolved marriage may be "deemed" to be entitled to spouse benefits pursuant to that section, regardless

of the entitlement of another individual recognized as the "legal" spouse under appropriate State law. The effect of this amendment is to allow payment of spouse annuities to both claimants. See Legal Opinion L-91-134[1]. Thus, if the proper evidence is provided as discussed above, E. could become entitled to an annuity as the deemed widow of Edward, assuming of course, that she met all other eligibility requirements.

You next inquire as to whether the Lord Mansfield Rule was incorrectly applied to entitle Coretta and Tammy to benefits in 1992. (W. L. and Coretta are in current pay status. Tammy was previously paid and terminated upon attainment of age 18). You indicate that the law of Louisiana was applied rather than the law of California, which was the actual domicile of the employee on the date of his death. Generally, in many states, the Lord Mansfield Rule bars the mother of the child and her legal husband at the time the child is conceived or born from giving testimony which might prove the child to be illegitimate. Both Louisiana and California do not follow the Lord Mansfield Rule. However, in Louisiana, a child is presumed the legitimate child of its mother's husband at the time of its birth unless its legitimacy is disputed by the husband or his heirs in a statutory action. RCM 4.4.15(b). Section 7540 of the California Family Code provides that, "Except as provided in section 7541 [which deals with resolving paternity through blood tests], the child of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage."

In the prior legal opinion rendered on August 5, 1992, it was determined that the children born during the course of the marriage of W. and Edward should be considered the employee's children because Louisiana law does not permit a parent to render children illegitimate by testimony. You are correct that California law should have been applied, since the employee

[1]I note that section 222.14(d) of the Board's regulations, which states that an individual may not be recognized as a "deemed" spouse where another individual is currently recognized as the spouse under State law, was promulgated in 1989 prior to the 1990 amendment, and is now obsolete.

was domiciled in California when he died. The conclusive presumption of paternity provided by section 7540 would not apply, since W. advised the district office that she ceased to live with the employee after he moved to California in 1968. The two children were born in 1978 and 1980. It is my opinion that neither Coretta nor Tammy was entitled to an annuity as the child of the deceased employee. It follows that W. was not entitled to an annuity as a young mother. However, because these annuities were paid as a result of an (informal) legal opinion, it is my further opinion that any current entitlement would simply end with no resulting overpayment. This opinion is based on section 261.3 of the Board's regulations which provides that:

> A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous and does not provide a basis for reopening.

I trust that the foregoing discussion will be of assistance to you.