



Memorandum # 42/2002

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
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Joseph E. Connarton, *Executive Director*

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Forfeiture of Retirement Allowance for Dereliction of Duty By Members

DATE: October 25, 2002

Enclosed please find a Temporary Order to Protect the Systems requiring all retirement boards to act to assure that the provisions of G.L. c. 32, § 15 have been carried out where appropriate. All boards must act immediately to comply with this order.

As you are aware, under G.L. c. 32, § 15, a member who is charged with misappropriation of funds or convicted of an offense related to funds of the governmental unit/system or of certain enumerated crimes or crimes related to the laws applicable to his/her office or position may lose the right to his/her retirement allowance and/or accumulated total deductions. The Supreme Judicial Court has upheld the validity of this section in the case of *MacLean v. State Board of Retirement*. 452 Mass. 339 (2000). All boards should review the provisions of G.L. c. 32, § 15 to assure that all board members and staff are aware of all of the necessary details and requirements.

It is important to note that the different provisions of G.L. c. 32, § 15 have different effective dates, different requirements and different penalties. The effective dates are:

G.L. c. 32, § 15(1) and (3) have been in effect from the origin of G.L. c. 32 through the present.

G.L. c. 32, § 15(3A) applies to any applicable convictions on or after January 4, 1983.

G.L. c. 32, § 15(4) applies to any applicable criminal offenses committed on or after January 12, 1988.

It is the responsibility of the individual retirement boards to make certain that the dictates of G.L. c. 32, § 15 are followed without deviation. If any individual is identified as potentially subject to pension forfeiture, proceedings against the member or retiree in question must be initiated immediately. The requirements of such proceedings are set out in G.L. c. 32, § 15(2) and G.L. c. 32, § 16(1). All boards have the responsibility to follow up on any information that a member or retiree may be subject to the provisions of G.L. c. 32, § 15, whether or not such information is in the files of the retirement system.

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It is irrelevant whether the member has retired by the time he/she is charged or convicted. Retirees continue to be subject to the forfeiture provisions of this section. The Attorney General has opined that a retirement board may postpone action on a retirement application pending the outcome of a G.L. c. 32, § 15 proceeding. Consequently, retirement boards must carefully review any retirement or withdrawal applications of any individual who is or may be charged with or convicted of a crime. The board should seek the advice of legal counsel before acting on any such applications.

The Commission is continuing to review this matter and is exploring methods to facilitate the boards' enforcements of this section.

We trust the foregoing is of assistance. If you have further questions or concerns, please contact this office.