



## Memorandum # 28/2006

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission  
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### MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: State Retirement Board v. Francis Woodward, SJC Decision

DATE: June 13, 2006

The Supreme Judicial Court has ruled that the 6 year statute of limitations applicable to contracts does not prohibit a Retirement Board from taking action pursuant to G.L. c. 32, § 15 more than 6 years after a member's conviction. If you would like a copy of the Court's decision, please contact Susan Childs, (617) 666-4446 Ext 907.

Mr. Woodward had been a State Representative and later an employee of the Department of Industrial Accidents until his retirement in 1995. He had been convicted of certain crimes on October 2, 1996 that would result in forfeiture of his pension under G.L. c. 32, § 15(4). The State Retirement Board took action to stop his allowance more than 6 years after he was convicted. The State Board found that his pension should be forfeited, but on appeal to the District Court the Judge found that the 6 year contract statute of limitations precluded the Board from acting because more than 6 years had passed.

The case was heard by the Supreme Judicial Court, and on May 15, 2006 a decision overturning the District Court was issued. After ruling on several jurisdictional matters, the Court ruled that the 6 year statute of limitations did not apply. The Court noted that several sections of G.L. c. 32 refer to actions in contract, but that G.L. c. 32, § 15 does not. On this point, the Court ruled:

Section 15 (4) states: "**In no event** shall any member after final conviction . . . be entitled to receive a retirement allowance under the provision of [G. L. c. 32, §§ 1-28], inclusive" (emphasis added). The words "[i]n no event" connote the absolute never or "under no circumstances." Citations omitted. It excludes all discretionary consideration. Indeed, in *MacLean v. State Bd.*

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*of Retirement*, Citation omitted, we said that forfeiture under § 15 (4) "is mandatory and occurs by operation of law," and that it "is an automatic legal consequence of conviction of certain offenses." We also said § 15 (4) "does not allow the board any discretion as to the revocation of pension benefits." Citation omitted. It would be illogical to permit the board to accomplish by inattention or inaction what it is prohibited from doing as a matter of discretion. We conclude that "in no event" is a clear expression of the Legislature's intent that pension forfeiture under § 15 (4) is not subject to any period of limitations.

Any Retirement Board that has refrained from acting pursuant to G.L. c. 32, § 15 awaiting the outcome of this case should immediately initiate the process called for in the statute.

If you have any questions, please feel free to contact this office.