



Memorandum 15 /2004

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
Five Middlesex Avenue, Third Floor, Somerville, MA 02145
Ph 617 666 4446 | Fax 617 628 4002 | TTY 617 591 8917 | www.mass.gov/perac
Robert E. Tierney, *Chairman* | A. Joseph DeNucci, *Vice Chairman*
C. Christopher Alberti | Kenneth J. Donnelly | Eric A. Kriss | James M. Machado | Donald R. Marquis
Joseph E. Connarton, *Executive Director*

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: *Boston Retirement Board v. Contributory Retirement Appeal Board et al.*,
441 Mass. 78 (2004)

DATE: March 8, 2004

The Massachusetts Supreme Judicial Court has affirmed PERAC's definition of earned income for the purposes of G.L. c. 32, § 91A. As provided in PERAC Memorandum #64/1998, distributions from a closely held corporation where a disability retiree provides some labor, management or supervision in the production of the distribution are considered earned income. The Court ruled, "PERAC's definition of 'earned income' is a reasonable interpretation of the statute on its face, thereby suggesting that it is consistent with legislative intent."

Justice Cowin, for the unanimous Court, wrote "[t]he purpose of § 91A is to prevent the overpayment of retirement benefits to individuals who are, by their labor, management, or supervision, earning a significant amount of money while simultaneously receiving a disability allowance. PERAC's definition furthers this purpose because it prevents disability retirees such as [the retiree] from circumventing the statute by labeling such earnings as something other than what they are."

The Court further ruled on PERAC's ability to make determinations regarding the retirement systems without going through the lengthy regulation process. "PERAC's memorandum is not a 'regulation' within the meaning of G. L. c. 30A, § 1 (5), and therefore did not require formal rule making procedures. PERAC circulated the memorandum after receiving inquiries from local boards concerning the definition of 'earned income.' Thus, the memorandum was issued only to clear up an ambiguity and fill in gaps for determining what constitutes 'earned income' pursuant to § 91A."

Lastly, on the issue of PERAC's ability to review decisions of retirement boards, the Court ruled that G.L. c. 32, § 21(4) empowers PERAC to approve any determinations of any board in order to effectuate the statute's purposes. The power to approve is a broad grant of review authority, and "necessarily implies the lesser power to 'disapprove' or 'reverse' a local retirement board's determination. PERAC's directive reversing the retirement board's determination ... was a proper exercise of PERAC's authority pursuant to G. L. c. 32."

This decision represents an important step in assuring that retirees faithfully comply with the provisions of G.L. c. 32, § 91A. If you have further questions or concerns, please contact this office.