



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



June 6, 1991

FILE NO. 91-026

**PENSIONS:**  
Felony Conviction Arising  
Out Of or In Connection  
With Service as A Judge

Honorable Carl A. Lund  
Chairman, Board of Trustees  
Judges Retirement System  
2101 South Veterans Parkway  
Springfield, Illinois 62794-9255

Dear Judge Lund:

I have your letter wherein you pose several questions relating to the conviction of Roger Seaman of mail fraud and filing a false income tax return, offenses which were committed while Mr. Seaman was a judge and a participant in the Judges Retirement System, and the effect which those convictions may have upon his pension rights. Specifically, noting that Mr. Seaman retired under the Retirement Systems' Reciprocal Act (Ill. Rev. Stat. 1989, ch. 108 1/2, par. 20-101 et seq.), you

Honorable Carl A. Lund - 2.

ask the following questions: firstly, did the convictions arise out of or in connection with his service as a judge, for purposes of section 18-163 of The Illinois Pension Code (Ill. Rev. Stat. 1989, ch. 108 1/2, par. 18-163); secondly, if so, do the convictions mandate the termination of proportional benefit payments by the Judges Retirement System; and lastly, if termination of benefits is mandated, is any overpayment recoverable for benefits which were paid before the date of the convictions?

You have advised that Mr. Seaman earned service credit in the County Employees' and Officers' Annuity and Benefit Fund from 1952 to 1957, in the Municipal Employees', Officers' and Officials' Annuity and Benefit Fund from 1957 to 1965, in the Sanitary District Employees' and Trustees' Annuity and Benefit Fund from 1965 to 1973, in the State Employees' Retirement System from 1973 to 1974, and in the Judges Retirement System from 1979 to 1983. Mr. Seaman retired as a judge on June 30, 1983, and began receiving a proportional annuity from the five systems under the provisions of the Retirement Systems' Reciprocal Act.

After his retirement, Mr. Seaman was indicted by a Federal grand jury on several charges resulting from the "Operation Greylord" investigation. On December 16, 1987, Mr. Seaman was adjudged guilty upon a plea of guilty to two counts of mail fraud (18 U.S.C. § 1341) and one count of filing

a false Federal tax return (26 U.S.C. § 7206(1)) for calendar year 1982. Violation of each section is a felony. The plea agreement filed December 16, 1987, in United States v. Seaman, (N.D. Ill) Doc. No. 87-CR-9283, recited the facts upon which the plea was based. Paragraph 5 thereof states, in part:

" \* \* \*

5. Defendant will plead guilty because he is in fact guilty of the charges contained in the indictment. In pleading guilty to these counts, defendant acknowledges that:

(a) As charged in Count Three and Eleven of the indictment, defendant ROGER G. SEAMAN was, during all pertinent times, a judge assigned to the 5th District of the Circuit Court of Cook County. In that capacity, he accepted money from attorneys who had cases pending before him. Two of the attorneys from whom he accepted money were Louis Dineff and Phillip Wertz, both of whom would give SEAMAN money in relation to cases where SEAMAN steered unrepresented defendants to Dineff and Wertz in SEAMAN's courtroom. As a matter of course, Dineff and Wertz gave SEAMAN a portion of the fees earned as a result of the cases steered to them that day. As a result of SEAMAN steering cases to those and other attorneys cash bond refunds were mailed to the attorneys with regard to the steered cases. Judge SEAMAN caused the refund to be mailed to the attorneys by signing their CBR Petitions.

\* \* \*

(b) As charged in Count Fourteen of the indictment, defendant Roger Seaman did file a federal tax return for the calendar year 1982 which he knew was not true and correct in that it understated his total income by failing to include the money that he had received in cash from lawyers with regard to cases pending before him.

\* \* \*

"

Honorable Carl A. Lund - 4.

On December 12, 1988, Mr. Seaman was sentenced to five years imprisonment on the two mail fraud counts, and two years probation on the false tax return count. The sentences were subsequently reduced to four years imprisonment and one year probation.

Section 18-163 of The Illinois Pension Code, which is applicable to the Judges Retirement System, provides, in pertinent part:

"\* \* \* None of the benefits herein provided shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with his or her service as a judge.

This Section shall not operate to impair any contract or vested right acquired before July 9, 1955 under any law or laws continued in this Article, nor to preclude the right to a refund.

All participants entering service subsequent to July 9, 1955 are deemed to have consented to the provisions of this Section as a condition of participation."

There are no reported cases construing the phrase "relating to or arising out of or in connection with \* \* \* service" as it appears in section 18-163 or elsewhere in The Illinois Pension Code. In Kerner v. State Employees' Retirement System (1978), 72 Ill. 2d 507, the court held that the phrase "convicted of any felony" referred to all felonies, whether State or Federal, but in that case it was conceded that the Federal convictions were related to or arose out of the

former Governor's service as Governor. Kerner's convictions included bribery and conspiracy, as well as failure to report income.

Former section 14-199 of The Illinois Pension Code (see Ill. Rev. Stat. 1975, ch. 108 1/2, par. 14-199, now codified at Ill. Rev. Stat. 1989, ch. 108 1/2, par. 14-149), which was construed by the court in Kerner v. State Employees' Retirement System, is a parallel provision to section 18-163. Consequently, the Supreme Court's comments regarding the construction of the section are helpful in resolving the present issue. The court initially noted that the objective in construing the statute was to ascertain and give effect to the legislative intent as determined from the necessity or reason for the enactment and the meaning of the words employed. The court further determined that the purposes of the statute were to discourage official malfeasance by denying the public servant convicted of unfaithfulness to his trust the retirement benefits to which he otherwise would have been entitled, and to implement the public's right to conscientious service from those in governmental positions. Kerner v. State Employees' Retirement System (1978), 72 Ill. 2d 507, 513.

Mr. Seaman was convicted of mailing payments to lawyers in connection with cases which he steered to them as a judge, and of failing to report as income money he received from lawyers practicing before him while he was serving as a judge. The mail fraud, the unreported income and resulting

convictions related to his judicial duties, and the offenses were facilitated by his judicial position. Under the plain language of section 18-163 of The Illinois Pension Code, there is no question but that these convictions arose out of or were related to his service as a judge. As discussed in Kerner v. State Employees' Retirement System, a literal interpretation of this provision accords with the purpose of the statute, that being to discourage official malfeasance. In view of this goal, it is immaterial that Mr. Seaman was convicted of mail fraud and failing to report income under Federal law rather than accepting bribes (Ill. Rev. Stat. 1989, ch. 38, par. 33-1) or official misconduct (Ill. Rev. Stat. 1989, ch. 38, par. 33-3) under State law, since the convictions were for felonies which arose from, were connected with or related to his service as a judge.

Secondly, you inquire whether the fact that Mr. Seaman retired under the Retirement Systems' Reciprocal Act, with an initial period of service in a reciprocating system prior to July 9, 1955, has any impact upon proportional benefits payable by the Judges Retirement System. There are no cases which discuss this issue as it relates to service in different systems accumulated for purposes of the Retirement Systems' Reciprocal Act. In People ex rel. Wright v. Board of Trustees (1987), 157 Ill. App. 3d 573, however, the court discussed the application of a similar felony forfeiture provision (see Ill. Rev. Stat. 1985, ch. 108 1/2, par. 16-199) to a teacher who had

been a participant in the Teachers' Retirement System prior to July 9, 1955, had left the system for a time, and then returned to it in 1962. The court held that Mr. Wright's pension was subject to forfeiture, stating:

" \* \* \*

\* \* \* Obviously, the purpose of section 16-199 is to deny pension benefits to anyone convicted of a felony related to the service for which he is to receive the pension. [Citations.] The legislature created an exception for those who began their service before the effective date of the forfeiture provision and it is consistent with the purpose of the statute to construe that exception narrowly so as not to apply it to one who left the system and returned. \* \* \*

\* \* \*

People ex rel. Wright v. Bd. of Trustees (1987),  
157 Ill. App. 3d 573, 578. "

Although Mr. Seaman had earned credit in another retirement system prior to 1955, he did not become a participant in the Judges Retirement System until 1979, long after the effective date of section 18-163. As importantly, a significant period of time elapsed between Mr. Seaman's relatively continuous service under the four other reciprocating systems and his service under the Judges Retirement System. This break in service is analogous to the factual situation in People ex rel. Wright v. Board of Trustees, in which the teacher had left and then returned to covered service, and upon reentry was deemed to have consented to the potential forfeiture of his pension. Mr. Seaman similarly must be deemed to have consented

to the imposition of section 18-163 when he entered service as a judge and became a participant in the system. Such a narrow construction of the exception is consistent with the holding in People ex rel. Wright v. Board of Trustees, as well as with the purpose of the statute as announced by the court in Kerner v. State Employees' Retirement System. Therefore, it is my opinion that Mr. Seaman's initial period of service prior to July 9, 1955, in another system and his election to retire under the Retirement Systems' Reciprocal Act, has no impact upon the applicability of section 18-163 to benefits payable from the Judges Retirement System. Having been convicted of service-related felonies, Mr. Seaman's benefits under the Judges Retirement System may properly be forfeited.

The final question raised is whether benefits in excess of contributions to a retirement system, which have already been paid to a person subject to the forfeiture of benefits, are subject to recovery. Similar issues were addressed in Janata v. Police Pension Fund (1986), 140 Ill. App. 3d 925, and in People ex rel. Wright v. Board of Trustees (1987), 157 Ill. App. 3d 573, wherein it was held that persons who were subject to felony forfeiture provisions under The Illinois Pension Code were entitled to receive all benefits payable until the date of conviction, and that no such payments could be recovered by the retirement systems which paid such benefits. Further, in the two cited cases, as well as in Moore



Honorable Carl A. Lund - 9.

v. Board of Trustees (1987), 157 Ill. App. 3d 158, it was held that "conviction", as that term is used in the pension forfeiture provisions, in Illinois criminal law (Ill. Rev. Stat. 1989, ch. 38, pars. 2-5) and in Federal law (Fed. R. Crim. P. 32(b)(1)), means the point at which conviction and sentence are entered. Therefore, proportional annuity amounts paid to Mr. Seaman by the Judges Retirement System prior to the date on which his conviction was entered may not be recovered.

In conclusion, based upon the authorities cited above, it is my opinion that Mr. Seaman's convictions arose from or were connected with his service as a judge, for purposes of section 18-163 of The Illinois Pension Code. The fact that he earned service credit in another retirement system prior to 1955 and elected to retire under the Retirement Systems' Reciprocal Act does not prevent application of the felony forfeiture provision of the Judges Retirement System. Proportional payments made to Mr. Seaman by the System prior to the entry of his judgment of conviction and sentence on December 12, 1988, are not subject to recovery by the System, however, even though such payments may have exceeded Mr. Seaman's contributions to the System.

Respectfully yours,



ROLAND W. BURRIS  
ATTORNEY GENERAL