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4 Eligibility of the President to Civil Service Retirement Benefits

You have asked my view as to whether the President is eligible for benefits under the Civil Service Retirement Act. Under existing law the President and the Vice President, being "elective officers in the executive branch of the Government" are excluded from such benefits (5 U.S.C. 693). The applicable provision reads in pertinent part:

10 "This chapter [Retirement of Civil Service Employees]
7 shall apply to all officers and employees in or under
the executive, judicial, and legislative branches of
the United States Government, and to all officers and
employees of the municipal government of the District
of Columbia, except elective officers in the executive
branch of the Government, * * *." (Italics supplied.)

The origin of this provision goes back to the Act of January 24, 1942, of the 77th Congress, which amended in full the early Civil Service Retirement Act of May 29, 1930 (46 Stat. 468). Section 3 of the 1942 legislation (56 Stat. 15) made provision for the application of retirement benefits to -

10 " * * * all officers and employees in or under the execu-
7 tive, judicial and legislative branches of the United
States Government, all elective and appointive officers
in or under the said branches. * * *" (Italics supplied.)

Thus, the President and Vice President were included. The provision was short-lived, however, and the Congress reversed its action in the same Congress with the enactment less than three months later of the following provision, which was a part of Section 16 of the Act of March 7, 1942 (56 Stat. 147). This provision specifically amended the earlier legislation of January 24, 1942. It provided -

10 "This Act shall apply to all officers and employees in or
7 under the executive, judicial and legislative branches
of the United States Government, and to all officers and
employees of the municipal government of the District of
Columbia, except elective officers and heads of executive
departments * * *."

With respect to the foregoing section, which was a conference amendment agreed to by both Houses, no doubt was left as to the Congressional meaning. Thus, the spokesman for the Senate Conference group reported (88 Cong. Rec. 1824):

10 " * * * under the Senate amendment, not only are the
7 President and his cabinet, the Vice President and
members of the House excluded from the coverage of
the Retirement Act, but also the heads of agencies
* * *

10 " * * * It is perhaps important to have this statement in
7 the Record, both in the House and in the Senate, so that in
the future, if efforts are made to interpret the law, it will
appear what was the intention of the House and Senate when the
conference report was accepted."

The legislation was later amended to permit heads of executive departments to obtain retirement benefits (60 Stat. 659). Still later, by provision in the Legislative Reorganization Act, members of Congress were admitted to participation (60 Stat. 850). Pursuant to the terms of the latter Act (Sec. 602(a)), the phrase "in the executive branch of the Government" was inserted to follow the words "except elective officers". Thus it was made certain that the President and Vice President survive as the two elective officers who are ineligible to Civil Service retirement benefits.

It should be noted that 5 U.S.C. 693 contains, in addition to the provision above quoted, the following proviso:

10 "Provided, That this chapter shall not apply to any
7 such officer or employee of the United States * * *
subject to another retirement system for such officers and employees * * *."

With respect to application of the proviso, consideration should be given to the possibility that retirement benefits may have been carried over from a retirement system under which an elective officer in the executive branch has previously served which may be continued.