

State of Minnesota

MEMORANDUM

TO: Donna Scott, Office of the Secretary of State DATE: Dec. 31, 1987

FROM: Shirley Footh, Judicial Office of the Governor *mf* PHONE: 296-0055

RE: WITHDRAWAL OF RETIREMENT ORDERS

The judicial retirement orders for the following judges are not in compliance with Minnesota Statutes making them ineffective. We hereby request that they be withdrawn.

<u>Judge</u>	<u>Signature date</u>
Elliott O. Boe	17 December 1987
Hyam Segell	17 November 1987

The retirement orders will be reissued at the appropriate time. Pertinent correspondence regarding these decisions is attached.

Thank you for your courtesy.

cc: Judy Rehak, Supreme Court
Doug Mewhorter, State Retirement
Chief Judge, Judicial District Two
Chief Judge, Judicial District Seven
John R. Tunheim, Office of the Attorney General
Kenneth Raschke, Office of the Attorney General

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DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

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Office Memorandum

DATE : December 31, 1987

TO : LYNN ANDERSON
Chief Operating Officer
Office of Governor Perpich

FROM : JOHN R. TUNHEIM
Chief Deputy *J.R.T.*
Attorney General

PHONE : 296-2351

SUBJECT : ORDERS CONCERNING THE RETIREMENT OF JUDGES HYAM SEGELL
AND ELLIOT BOE

Your office has brought to our attention recent gubernatorial orders filed for the disability retirement of Judges Hyam Segell and Elliot Boe. (Attached.) The order governing Judge Segell was dated November 17, 1987, and specified a retirement date of March 31, 1988. The order affecting Judge Boe was dated December 17, 1987, and specified a retirement date of April 1, 1988. Each of the orders were based on the voluntary application of the judge.

In our view these orders may not be given effect as written because they are in conflict with Minn. Stat. § 490.121, subd. 14, which provides:

Subd. 14. "Disability retirement date" means the last day of the first month after which the governor determines, upon voluntary application by the judge or otherwise, that a judge suffers from a disability.

Pursuant to this definition, an order may not be issued in November or December to affect a disability retirement in March or April. Thus, the orders in question, to the extent that is their intent, are ineffective and must be withdrawn. They could be re-issued based upon a disability determination made at an appropriate future time or re-issued with the appropriate statutorily mandated retirement dates.

While we might presume that judges are aware of the statutes governing judicial retirement, it would be well advised in the future to call this subdivision specifically to the attention of any judge submitting application for disability retirement as of a particular future date. Indeed, the concept of planned disability retirement is rather at odds with the concept of disability as embodied in Minn. Stat. § 490.121, subd. 13.

Governor Rudy Perpich

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December 31, 1987

We are also aware of a previous order of a similar nature respecting Judge David Leslie directing retirement in November of 1987. Since that date is now past, there would seem little purpose to be served in addressing that order at this time.

If we can be of any further assistance upon this matter, please feel free to contact me.

J.R.T.

Attach.

STATE OF MINNESOTA
DEPARTMENT OF STATE
JAN 2 1988

James J. ...

Secretary of State

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