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Supplementary Material

Chapter 10: The Reagan Era – Separation of Powers/Emoluments

*Larry L. Simms*, **President Reagan’s Ability to Receive Retirement Benefits from the State of California** (1981)[[1]](#footnote-1)

*When Ronald Reagan won the presidency in 1980, he had already served two terms as governor of the state of California. As a result of that service, he was drawing benefits from the state retirement system. Under California law, those retirement benefits were a form of vested property and not within the power of the state to withdraw. The U.S. Constitution specifies that the president of the United States would receive compensation from Congress for his services during his tern of office and “shall not receive within that Period any other Emolument from the United States, or any of them.” This raised the question of whether the president’s state retirement benefits ran afoul of the presidential emoluments clause. The Office of Legal Counsel concluded that under California law, retirement benefits were characterized as an incident of an individual having “pensionable status,” and the OLC concluded that this took them outside the letter of the emoluments clause. Since the pension benefits could not be used as a source of influence over the president, they also seemed to fall outside the spirit of the clause.*

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The word “emolument” is an archaic term. The Oxford English Dictionary defines it as “profit or gain arising from station, office, or employment: reward, remuneration, salary.”

The extant records of the Constitutional Convention are silent re­garding the purposes which Article II, § 1, clause 7, and related Article I, § 9, clause 8 1 were intended to serve. Both clauses, however, were discussed during the State Ratification Conventions. . . .

. . . . From this history, it appears that the term emolument has a strong connotation of, if it is not indeed limited to, payments which have a potential of influencing or corrupting the integrity of the recipient. To our knowledge, these two provisions were interpreted by federal authorities in that manner in all but one of the incidents in which this problem arose.

In 1902 Acting Attorney General Hoyt explained that the purpose of Article I, § 9, clause 8 was “particularly directed against every kind of influence by foreign governments upon officers of the United States. . . .”

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The same analysis of the problem was made by this Office in 1964 in connection with the question whether the estate of President Kennedy was entitled to the naval retirement pay that had accrued while he was President. A memorandum prepared in this Office was based on the consideration that Article II, § 1, clause 7 has to be interpreted in the light of its basic purposes and principles, viz.,to prevent Congress or any of the states from attempting to influence the President through financial awards or penalties. . . .

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Hence, if Article II, § 1, clause 7 is to be interpreted only on the basis of the purposes it is intended to achieve, it would not bar the receipt by President Reagan of a pension in which he acquired a vested right 6 years before he became President, for which he no longer has to perform any services, and of which the State of California cannot deprive him.

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. . . . Rulings of the courts of California interpreting Article 16, §6 of the California Constitution, which prohibits the gifts of public moneys, and Article 4, § 17 and Article 11, § 1, which prohibit the grant of extra compensation by local governments after services have been rendered, however, have determined that in California retirement bene­fits such as those received by President Reagan are neither gifts nor compensation for services.

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. . . . Under California law retirement benefits therefore constitute an incident of the pensionable status. They are neither a gift nor a part of the retiree’s compensation, earned while employed, the payment of which is deferred until after his retirement. In any event, regardless of any dictionary definition, retirement benefits are not emoluments within the meaning of the Constitution because interests of this kind were not contemplated by the members of the Constitutional Convention of 1789.

In sum, the receipt by President Reagan of his California retirement benefits does not violate the language of Article II, § 1, clause 7 of the Constitution because those benefits are not emoluments in the constitu­tional sense. Similarly, such receipt does not violate the spirit of the Constitution because they do not subject the President to any improper influence. . . .

1. Excerpt taken from Larry L. Simms, “President Reagan’s Ability to Receive Retirement Benefits from the State of California” 5 *Op. O.L.C*. 187 (1981). [↑](#footnote-ref-1)