



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 14, 2011

FILE NO. 11-004

PENSIONS:
Felony Forfeiture of
Pension Benefits

Mr. Timothy B. Blair
Executive Secretary
State Employees' Retirement System
2101 South Veterans Parkway
P.O. Box 19255
Springfield, Illinois 62794-9255

Dear Mr. Blair:

I have your letter inquiring whether, pursuant to section 14-149 of the Illinois Pension Code (Pension Code) (40 ILCS 5/14-149 (West 2008)), Juan Rodriguez, a member of the State Employees' Retirement System, has forfeited his pension benefits as a result of his convictions of official misconduct (720 ILCS 5/33-3(b) (West 2008)) and possession of child pornography (720 ILCS 5/11-20.1(a)(6) (West 2008)). For the reasons stated below, it is my opinion that Juan Rodriguez's criminal convictions require the forfeiture of his pension benefits.

BACKGROUND

According to the records of the Circuit Court of the Eighteenth Judicial Circuit, on June 14, 2011, Rodriguez was convicted upon a plea of guilty of one count of official misconduct and one count of possession of child pornography. *People v. Rodriguez*, Docket No. 10-CF-1390 (Circuit Court, DuPage County). The multi-count indictment, pursuant to which the convictions were entered, charged that, on or about August 14, 2009, while Rodriguez was employed as an Illinois State Trooper, he performed, in his official capacity, an act which he knew he was forbidden by law to perform. Indictment, Count 2, *People v. Rodriguez*, Docket No. 10-CF-1390-02 (Circuit Court, DuPage County, June 17, 2010). Specifically, while on duty as an Illinois State Trooper, Rodriguez used a State-owned computer to access the internet and view child pornography. Further, Rodriguez also "knowingly possessed a depiction by computer of a child * * * which * * * show[ed] the child actually engaged in an act of lewd touching involving another person[.]" Indictment, Count 21, *Rodriguez*, Docket No. 10-CF-1390-21. The offenses of official misconduct and possession of child pornography are Class 3 felonies under Illinois law. 720 ILCS 5/11-20.1(c), 33-3 (West 2008).

ANALYSIS

Section 14-149 of the Pension Code provides, with respect to members of the State Employees' Retirement System:

Felony conviction. None of the benefits herein provided for shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with his service as an employee.

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

All future entrants entering service subsequent to July 9, 1955 shall be deemed to have consented to the provisions of this section as a condition of coverage. (Emphasis added.)

The purpose of the felony forfeiture provisions in the Pension Code is to protect the public's right to conscientious service from those in governmental positions. These provisions discourage official misconduct by denying retirement benefits to the public servant convicted of unfaithfulness to his trust. *Ryan v. Board of Trustees of the General Assembly Retirement System*, 236 Ill. 2d 315, 322 (2010); *Kerner v. State Employees' Retirement System*, 72 Ill. 2d 507, 513 (1978), *cert. denied*, 441 U.S. 923, 99 S. Ct. 2032 (1979). The critical inquiry in determining whether a felony is "relat[ed] to or ar[ose] out of or in connection with" service as an employee is whether a nexus existed between the employee's criminal wrongdoing and the performance of his official duties. *Devoney v. Retirement Board of the Policemen's Annuity & Benefit Fund for the City of Chicago*, 199 Ill. 2d 414, 419 (2002); *Bauer v. State Employees' Retirement System*, 366 Ill. App. 3d 1007, 1014 (2006), *appeal denied*, 222 Ill. 2d 267 (2006).

Rodriguez's convictions for official misconduct and possession of child pornography clearly related to, arose out of, or were in connection with his service as an Illinois State Trooper. As a State employee, Rodriguez was under a duty to use public property only for lawful, public purposes. *See generally* Ill. Const. 1970, art. VIII, §1. While working as an Illinois State Trooper, however, Rodriguez violated that duty. He misappropriated the State's

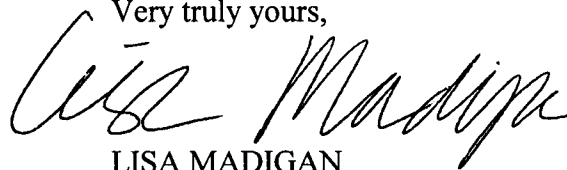
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computers and property and improperly used State work time to commit the crimes for which he was convicted. Were it not for his employment with the Illinois State Police, Rodriguez would not have been in a position to use State property to engage in this clear violation of the public trust. This is precisely the type of abuse of trust by a government employee that section 14-149 of the Pension Code was intended to discourage.

CONCLUSION

Based upon the records of the Circuit Court of the Eighteenth Judicial Circuit, it is my opinion that Juan Rodriguez has forfeited his retirement benefits pursuant to section 14-149 of the Pension Code. He does retain the right to a refund of his contributions to the System, however. *Shields v. Judges' Retirement System of Illinois*, 204 Ill. 2d 488, 497 (2003), *appeal denied*, 219 Ill. 2d 598 (2006).

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lisa Madigan".

LISA MADIGAN
ATTORNEY GENERAL