



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 21, 2009

FILE NO. 09-004

PENSIONS:
Felony Forfeiture
of Pension Benefits

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

Dear Mr. Blair:

I have received your letter inquiring whether Matthew Robinson has forfeited his pension benefits as a result of his convictions for official misconduct and possession of child pornography. For the reasons stated below, it is my opinion that Matthew Robinson's convictions for official misconduct and possession of child pornography require the forfeiture of his pension benefits.

According to the records of the Circuit Court for the Seventh Judicial Circuit, on March 13, 2008, the State's Attorney of Sangamon County filed a ten-count information against Matthew Robinson. *People v. Robinson*, Docket No. 08-CF-179 (Circuit Court, Sangamon

Mr. Tim Blair - 2

County).¹ Robinson subsequently pled guilty on February 27, 2009, to one count of official misconduct and one count of possession of child pornography. *See* Docket Entry, *People v. Robinson*, Docket No. 08-CF-179 (Circuit Court, Sangamon County). The court sentenced him to a term of probation of 30 months and required him to serve 12 days in the county jail, with credit for time served, perform 100 hours of public service, and successfully complete sex offender treatment for each offense. The court also required Robinson to pay a fine in the amount of \$1,000.00 for the offense of official misconduct. Order of Conditions of Probation, *People v. Robinson*, Docket No. 08-CF-179 (Circuit Court, Sangamon County). Under Illinois law, the offenses of official misconduct and possession of child pornography are felonies. *See* 720 ILCS 5/33-3, 11-20.1(c) (West 2008).

The information, upon which the conviction was entered, states that on or about October 10, 2006, while Robinson was employed as "an emergency telecommunicator with the Illinois Emergency Management Agency, [and] while acting in his official capacity," he performed an act which he knew he was forbidden by law to perform in that "he committed the offense of [p]ossession of [c]hild [p]ornography * * * by downloading child pornography videos onto his work computer during work hours." Information, Count I, *People v. Robinson*, Docket No. 08-CF-179 (Circuit Court, Sangamon County). The information additionally charges that on or about September 3, 2007, Robinson possessed a video depicting a child engaging in an act of sexual conduct with an adult. Information, Count II.

¹A ten-count complaint was previously filed on February 27, 2008. *People v. Robinson*, Docket No. 08-CF-179 (Circuit Court, Sangamon County).

ANALYSIS

Section 14-149 of the Illinois Pension Code (the Pension Code) (40 ILCS 5/14-149 (West 2008)) 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.)

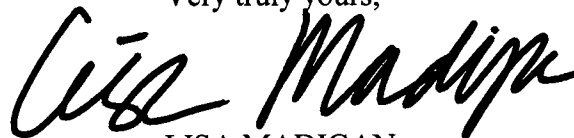
The public unquestionably has the right to conscientious service from those in governmental positions. The purpose of the felony forfeiture provisions in the Pension Code is to implement that right and discourage official malfeasance by denying retirement benefits to public servants convicted of violating the public's trust. *Kerner v. State Employees' Retirement System*, 72 Ill. 2d 507, 513 (1978), *cert. denied*, 441 U.S. 923, 99 S. Ct. 2032 (1979); *Bauer v. State Employees' Retirement System*, 366 Ill. App. 3d 1007, 1013 (2006), *appeal denied*, 222 Ill. 2d 567 (2006). The pivotal 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).

Mr. Tim Blair - 4

Robinson's convictions for official misconduct and possession of child pornography clearly related to, arose out of, and were in connection with his service as an employee of the Illinois Emergency Management Agency. As a State employee, Robinson was under a duty to use public property only for lawful, public purposes. *See generally* Ill. Const. 1970, art. VIII, §1. While serving as an emergency telecommunicator for the Illinois Emergency Management Agency, Robinson misappropriated the State's computers and property and improperly used State work time to commit the unlawful acts for which he was convicted. Indeed, the official misconduct offense to which Robinson pled guilty is predicated upon the fact that he was acting in his capacity as a public employee when the offense occurred. Were it not for his status as an employee of the Illinois Emergency Management Agency, Robinson would not have been in a position to use State property to engage in this egregious violation of the public trust. This is precisely the type of reprehensible misconduct that section 14-149 of the Pension Code was intended to discourage.

Therefore, based on the records of the Circuit Court of the Seventh Judicial Circuit, it is my opinion that Matthew Robinson's felony convictions require that he forfeit his retirement benefits under the State Employees' Retirement System. Under the Pension Code, however, he retains the right to a refund of his contributions to the System. *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 black ink, appearing to read "Lisa Madigan", written in a cursive style.

LISA MADIGAN
Attorney General