



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

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FILE NO. 11-003

PENSIONS:
Felony Forfeiture of
Pension Benefits

Mr. Timothy Blair
Executive Secretary
General Assembly 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 2-156 of the Illinois Pension Code (the Pension Code) (40 ILCS 5/2-156 (West 2010)), former Governor Rod Blagojevich (Blagojevich) has forfeited his pension benefits under the General Assembly Retirement System (the System) as a result of his convictions on Federal criminal charges. For the reasons stated below, it is my opinion that Blagojevich has forfeited his pension benefits under section 2-156 of the Pension Code because all 18 of his felony convictions clearly arose out of and in connection with his service as Governor of the State of Illinois.

BACKGROUND

Blagojevich was arrested on December 9, 2008, based on a two-count Criminal Complaint. On February 4, 2010, a special grand jury returned a Second Superseding Indictment charging Blagojevich with 24 counts and seeking forfeiture in two allegations. Blagojevich was tried in the United States District Court for the Northern District of Illinois and on August 17, 2010, a jury found him guilty of one count of making false statements and representations to the Federal Bureau of Investigation (FBI).¹ The court declared a mistrial as to the remaining 23 counts of the Second Superseding Indictment, *United States v. Blagojevich*, No. 08 CR 888 (N.D. Ill. February 4, 2010) (Indictment). Blagojevich was then retried on 20 counts of the Indictment.² On June 27, 2011, the jury found Blagojevich guilty of 17 counts.³ Specifically, the jury in his second trial found Blagojevich guilty of wire fraud (18 U.S.C. §1343), conspiracy and attempt to commit extortion (18 U.S.C. §1951(a), (b)(2)), bribery concerning programs receiving Federal funds (18 U.S.C. §666(a)(1)(B), (2)), and conspiracy to commit an offense against the United States (18 U.S.C. §371). The court sentenced Blagojevich to 14 years in prison on December 7, 2011.

¹The jury found Blagojevich guilty as to Count Twenty-Four.

²On February 24, 2011, the court granted the United States' oral motion to dismiss Counts One, Two, and Four and Forfeiture Allegation One of the Indictment. Docket Entry No. 625, *United States v. Blagojevich*, No. 08 CR 888 (N.D. Ill. February 24, 2011). The retrial was held on Count Three, Counts Five through Twenty-Three, and Forfeiture Allegation Two of the Indictment. Forfeiture Allegation Two was dismissed upon oral motion of the United States on June 27, 2011. Docket Entry No. 754, *United States v. Blagojevich*, No. 08 CR 888 (N.D. Ill. June 27, 2011).

³The jury returned a not guilty verdict on Count Seventeen and did not enter a verdict as to Counts Fourteen and Sixteen. Docket Entry No. 754, *United States v. Blagojevich*, No. 08 CR 888 (N.D. Ill. June 27, 2011).

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The Indictment against Blagojevich details the conduct giving rise to the charges and the guilty verdicts. Over 112 pages, the Indictment lays out how Blagojevich, together with other State officers and employees, campaign fundraisers, and businessmen, schemed to defraud the government and the people of Illinois. In an overview of his criminal schemes, the Indictment states that Blagojevich and the others "used and attempted to use the powers of the Office of the Governor, and of certain state boards and commissions subject to influence by the Office of the Governor, to take and cause official actions, including: appointments to boards and commissions; the awarding of state business, grants, and investment fund allocations; the enactment of legislation and executive orders; and the appointment of a United States Senator; in exchange for financial benefits for themselves and others, including campaign contributions for ROD BLAGOJEVICH, money for themselves, and employment for ROD BLAGOJEVICH and his wife[.]" Indictment, at 47.

First Trial

In his first trial, the jury found that, in 2005, Blagojevich made false statements to FBI agents who were investigating corruption and fraud by Blagojevich and others involving the Office of the Governor and related entities and individuals. When he was interviewed by FBI agents, Blagojevich falsely stated that since becoming Governor, he "tried to maintain a firewall between politics and government" and did "not track, or want to know, who contributes to him or how much they contribut[e][.]" Indictment, at 106.

Second Trial

In its verdicts on ten of the charges in the Indictment (Counts Three and Five through Thirteen), the jury found Blagojevich guilty of wire fraud. These wire fraud counts are based primarily on four of Blagojevich's separate, specific schemes to use his power as Governor for his and his wife's personal financial gain and to obtain campaign contributions:

(1) Solicitation of Campaign Contributions from the CEO of Children's Memorial Hospital: The Indictment charges that Blagojevich advised a lobbyist that he intended to "take official action that would provide additional state money to Children's Memorial Hospital," and, in exchange, he wanted campaign contributions from the hospital's chief executive officer (Children's CEO). Indictment, at 56-57. In furtherance of this scheme, Blagojevich told the Children's CEO that he had approved an increase in the Illinois Medicaid reimbursement rate for specialty-care pediatric physicians. At his direction, Blagojevich's brother, who also served as the chairman of Blagojevich's campaign committee, Friends of Blagojevich, spoke with the Children's CEO and asked him to raise \$25,000 in campaign contributions. When Blagojevich did not receive political contributions from the Children's CEO or any other individuals associated with the hospital, Blagojevich's staff suspended work by a State agency to increase the pediatric physician reimbursement rate. Indictment, at 56-58.

(2) Solicitation of Campaign Contributions from a Racetrack Executive: The Indictment charges that Blagojevich also schemed to use his power to sign legislation into law in an effort to obtain campaign contributions from an executive of an industry that stood to benefit from a bill passed by the Illinois General Assembly. Specifically, the Indictment describes how

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in mid-November 2008, Blagojevich told his brother that he wanted campaign contributions by the end of the year from an executive who managed horse racing tracks. According to the Indictment, Blagojevich "had set a goal of raising \$100,000 in contributions from and through" the racetrack executive. Indictment, at 58. At that time, the legislature was considering a bill that would financially benefit horse racing tracks, including those managed by the executive, by requiring certain Illinois casinos to contribute money to a fund to help the State's horse racing industry. Also at that time, Blagojevich was aware that Alonzo Monk (Monk), Blagojevich's longtime friend and associate, former chief of staff, and a current lobbyist, "had been trying to arrange a contribution from [the] [r]acetrack [e]xecutive[.]" Indictment, at 58.

After the General Assembly passed the bill in late November, Blagojevich expressed his concern to Monk that the racetrack executive would not contribute to the campaign by the end of 2008 if Blagojevich signed the bill before his campaign committee received the contribution. Indictment, at 59. To further his scheme to obtain campaign contributions, Blagojevich agreed to increase the pressure on the racetrack executive to make a campaign contribution by calling him and suggesting that he would sign the bill. Indictment, at 60.

(3) Solicitation of Campaign Contributions from a Highway Contractor: The Indictment also charges that Blagojevich solicited campaign contributions from a road construction industry executive in exchange for having the State undertake a road building program. During a meeting with the construction executive, Blagojevich indicated that he was planning to announce a \$1.5 billion road building program that would be administered through the Illinois Toll Highway Authority. Blagojevich told the construction executive that he might

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authorize an additional \$6 billion road building program later and requested the construction executive's help in raising campaign contributions by the end of 2008. Blagojevich set a goal with his staff of raising \$500,000 in contributions from the construction executive. To execute this plan, Blagojevich publicly announced a \$1.8 billion program to upgrade interchanges on the tollway system, and then called the construction executive to ask how his fundraising was progressing. Indictment, at 60-61.

(4) Seeking Personal Financial Benefits and Campaign Contributions in Exchange for the Appointment of a United States Senator: The Indictment charges that Blagojevich "sought to obtain financial benefits for himself and his wife, in return for the exercise of his duty under Illinois law to appoint a United States Senator to fill the vacancy created by the election of Barack Obama as President of the United States." Indictment, at 62. The potential financial benefits that Blagojevich sought in exchange for exercising this gubernatorial power included his appointment to high-ranking positions in the Federal government; a highly paid leadership position with a private foundation dependent upon Federal funding, which Blagojevich believed the President-elect could influence; a highly paid leadership position with an organization called "Change to Win," with the expectation that the President-elect would assist Change to Win with its national legislative agenda; employment of Blagojevich's wife with a union organization or lobbying firm or a position for her on a corporate board of directors; a highly paid leadership position with a newly-created, not-for-profit corporation that Blagojevich believed could be funded with large contributions by individuals associated with the President-elect; and substantial campaign fundraising assistance from individuals seeking the United States Senate

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seat and their backers. Indictment, at 63-64. As part of this scheme, Blagojevich conducted numerous conversations in an attempt to use his power as Governor to fill the United States Senate vacancy in exchange for financial benefits for himself, his wife, and his campaign committee. Indictment, Counts Three, Five through Eleven, Thirteen.

In addition to its verdicts on the wire fraud charges, the jury in his second trial found Blagojevich guilty on seven other counts. The jury concluded that Blagojevich attempted and/or conspired to commit extortion by using the actual and threatened fear of economic harm to obtain campaign contributions from the CEO of Children's Memorial Hospital (Count Fifteen) and to obtain financial benefits for himself and his wife, as well as campaign contributions, in connection with the exercise of his power to fill the United States Senate vacancy (Counts Twenty-One and Twenty-Two). Additionally, the jury concluded that Blagojevich also attempted to commit extortion by using his office to threaten economic harm to a construction executive and his company in an effort to obtain political contributions. Indictment, Count Nineteen.

Under Counts Eighteen and Twenty-Three, the jury found Blagojevich guilty of conspiracy to commit an offense against the United States by conspiring to corruptly solicit and demand political contributions and personal financial benefits in exchange for signing the bill impacting racetracks and in exchange for filling the United States Senate vacancy.

Under Count Twenty, the jury found that Blagojevich committed bribery by corruptly soliciting and demanding political contributions from the construction executive and his company in exchange for favorable government action involving the State's road building program.

All of the offenses for which the juries returned guilty verdicts and the court sentenced Blagojevich are felonies under Federal law. *See* 18 U.S.C. §3559.

ANALYSIS

Section 2-156 of the Pension Code requires the forfeiture of a participant's⁴ retirement annuities and other pension benefits upon his or her conviction of a service-related felony:

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 or her service as a member.*

This Section shall not operate to impair any contract or vested right acquired prior to July 11, 1955 under any law or laws continued in this Article, *nor to preclude the right to a refund.*

All participants entering service subsequent to July 11, 1955 shall be deemed to have consented to the provisions of this Section as a condition of participation. (Emphasis added.)

The purpose of this provision is self-evident. It exists to deter officials in whom the public places its trust from violating that trust for their own unlawful ends. *Ryan v. Board of Trustees of the General Assembly Retirement System*, 236 Ill. 2d 315, 322 (2010); *Kerner v. State Employees' Retirement System of Illinois*, 72 Ill. 2d 507, 513 (1978), *cert. denied*, 441 U.S. 923, 99 S. Ct. 2032 (1979). Accordingly, whether a felony is "relat[ed] to or ar[ose] out of or in

⁴According to the information that you provided, Blagojevich has ten years and one month of service credit with the System. He served as a member of the Illinois House of Representatives from January 1993 through December 1996. He then served as Governor of the State of Illinois from January 2003 until he was removed from office on January 29, 2009, after impeachment by the House of Representatives and conviction by the Senate.

connection with" public service necessarily turns on whether a nexus existed between the public servant's criminal wrongdoing and the performance of his or her official duties. *Devoney v. Retirement Board of the Policemen's Annuity & Benefit Fund for the City of Chicago*, 199 Ill. 2d 414, 419 (2002); Ill. Att'y Gen. Op. No. 06-002, issued September 12, 2006.

It is beyond dispute that Blagojevich's convictions related to, arose out of, and were in connection with his service as Governor. The facts underlying the charges and the juries' verdicts demonstrate that Blagojevich repeatedly misused his position as Governor in an effort to obtain financial benefits for himself, his wife, and his political campaign committee. As alleged in the Indictment, Blagojevich lied to FBI agents who were investigating corruption and fraud involving the Governor's office in a clear attempt to obstruct a Federal investigation, at least in part to avoid the consequences of his wrongdoing as Governor. Additionally, Blagojevich attempted and conspired to obtain political contributions in exchange for providing increased Medicaid funding for medical care for children, signing certain legislation, and announcing a lucrative road building program, all in his official capacity as Governor. Finally, Blagojevich also sought to obtain financial benefits for himself and his wife and campaign contributions for his political committee in return for exercising his duty as Governor to appoint a United States Senator to represent the people of Illinois.

But for his status as Governor and the powers of that office, Blagojevich would never have been in a position to commit the criminal acts underlying the 18 counts on which he was found guilty. Blagojevich's criminal misconduct not only related directly to his official duties as Governor but, in fact, involved the exercise of those very duties. He repeatedly traded

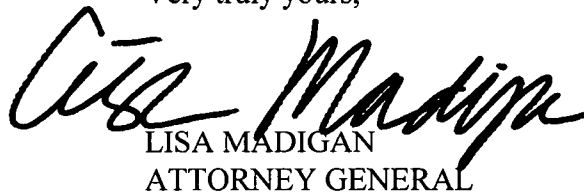
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on his position as a public servant for his own, unlawful ends, violating the public's trust. This is precisely the illegal conduct that section 2-156 exists to deter.

CONCLUSION

As a result of his numerous felony convictions based on extensive criminal conduct that was directly related to his service as Governor of the State of Illinois, it is my opinion that Rod Blagojevich has forfeited all of his pension benefits.⁵

Very truly yours,



LISA MADIGAN
ATTORNEY GENERAL

⁵Under section 2-156 of the Pension Code, however, this forfeiture does not "preclude the right to a refund." Accordingly, the Code entitles Blagojevich to a refund, without interest, of his contributions to the System. *Shields v. State Employees Retirement System of Illinois*, 363 Ill. App. 3d 999, 1001-06 (2006), *appeal denied*, 219 Ill. 2d 598 (2006); Ill. Att'y Gen. Op. No. 06-002, issued September 12, 2006.