



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 18, 2015

FILE NO. 15-005

PENSIONS:
Felony Forfeiture
of Pension Benefits

Mr. Timothy Blair
Executive Secretary
General Assembly Retirement System
2101 South Veterans Parkway
Post Office 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 2014)), former State Representative Constance A. Howard has forfeited her pension benefits under the General Assembly Retirement System as a result of her Federal conviction of mail fraud. For the reasons stated below, it is my opinion that Howard has forfeited her pension benefits under section 2-156 of the Pension Code because her felony conviction arose out of and in connection with her service as a member of the Illinois House of Representatives.

BACKGROUND

According to the records of the United States District Court for the Central District of Illinois, on July 17, 2013, Howard was charged by Information with one count of mail fraud, in violation of 18 U.S.C. §1341. *United States v. Howard*, No. 13-30057 (C.D. Ill. July 17, 2013). Howard subsequently pled guilty to one count of mail fraud. *United States v. Howard*, No. 13-30057 (C.D. Ill. July 24, 2013). On December 8, 2015, the court held a sentencing hearing and sentenced Howard to three months of imprisonment and three years of supervised release. The court also ordered her to pay monetary penalties. Judgment in a Criminal Case, *United States v. Howard*, No. 13-30057 (C.D. Ill. December 11, 2015). The offense of mail fraud is a felony under Federal law. *See* 18 U.S.C. §3559(a).

The Information, pursuant to which the conviction was entered, states that, from approximately July 2003 to February 2008 Howard "knowingly devised and participated in a scheme to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, promises, and material omissions." Information, *United States v. Howard*, No. 13-30057 (C.D. Ill. July 17, 2013) (Information), at 2. Specifically, the Information alleged that Howard: (1) created an entity known as "Tee Off For Technology" (TOFT); (2) established a bank account in the name of TOFT; (3) established the "Constance A. 'Connie' Howard Computer Technology Scholarship Fund" (the Fund); and (4) organized an annual golf outing to raise money for the Fund. Information, at 1-2. The Information charged that Howard used TOFT and the annual golf outings to raise money by "falsely representing that such monies * * *

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would be used to provide scholarships to students in need who were seeking a degree in computer science and related fields[.]" Information, at 2-3. According to the Information, however, Howard "intended to and did convert part of such monies to her personal and political use[.]" Information, at 3.

ANALYSIS

Section 2-156 of the Pension Code requires the forfeiture of retirement annuities and other pension benefits of a member of the General Assembly Retirement System¹ 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.* (Emphasis added.)

The purpose of the felony forfeiture provisions in the Pension Code is to discourage official malfeasance and to implement the public's right to conscientious service from those in governmental positions by denying retirement benefits to public servants convicted of violating the public's 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 if a felony is "relat[ed] to or ar[ose] out of or in connection with" public service necessarily turns on whether a nexus existed between the public servant's criminal wrongdoing

¹Howard became a member of the General Assembly Retirement System as a result of her service as a member of the Illinois House of Representatives from 1995 to 2012. 40 ILCS 5/2-101 *et seq.* (West 2014).

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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).

Howard's conviction related to, arose out of, and was connected to her service as a State Representative. Howard's criminal conduct, which resulted in her conviction for mail fraud, occurred while Howard was a member of the Illinois House of Representatives. The facts underlying the offense demonstrate that Howard used her position as a State Representative to obtain financial benefits for herself and her campaign committee.

As part of her scheme to defraud, Howard solicited and obtained funds, through an annual golf outing, for scholarships for students in need who were seeking degrees in computer science and related fields. Howard linked her solicitation of funds to her official capacity as a member of the General Assembly. Specifically, the invitation to the 2003 golf outing expressly indicated that it was "benefiting the State Representative Constance A. 'Connie' Howard Computer Technology Scholarship Program" and directed people desiring "additional information [to] please contact Representative Connie Howard" or another individual at the address and phone number for Howard's legislative district office. As the Information states, while Howard falsely represented that the monies raised would be used to fund scholarships, she "intended to and did convert part of such monies to her personal and political use[.]" Information, at 3. The State Board of Elections campaign disclosure database indicates that Tee Off for Technology, located at the same address as Howard's legislative district office, 8729 South State, Chicago, Illinois 60619, made seven campaign contributions to Citizens for Howard

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totaling \$2,550.00 between September 13, 2004, and September 13, 2006. *See*
<http://www.elections.il.gov/CampaignDisclosure/ContributionsSearchByAllContributions.aspx>.

CONCLUSION

Howard used her status as a State Representative to encourage contributions to Tee Off For Technology that she represented would be used to fund scholarships but some of these contributions were ultimately put to "her personal and political use[.]" Accordingly, because her felony conviction was based on criminal conduct that was directly related to her service as a State Representative, it is my opinion that Constance A. Howard has forfeited her pension benefits.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is fluid and cursive, with the first name "Lisa" written in a larger, more prominent script than the last name "Madigan".

LISA MADIGAN
ATTORNEY GENERAL