

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

George H. Ryan, Sr.,
Plaintiff

No. 06 CH 28340

v.

The Board of Trustees of the General
Assembly Retirement System of Illinois,
Rep. Kurt M. Granberg, Sen. James
Clayborne, Sen. Don Harmon, Rep.
Richard T. Bradley, Sen. William Brady,
Rep. Lee Daniels, and Rep Philip Collins
In their official capacities,
Defendants

Memorandum Opinion

This cause is before the Court on Plaintiff George H. Ryan Sr.'s motion for administrative review pursuant to the Illinois Pension Code, 40 ILCS 5/2-157 and the Administrative Review Act, 735 ILCS 5/3-101 *et. seq.*¹

Facts

This case arises out of Defendant The Board of Trustees of the General Assembly Retirement System of Illinois's (the "Board") decision to terminate Plaintiff George H. Ryan Sr.'s ("Ryan") pension benefits in their entirety, effective September 6, 2006. (R. at 259.)

Ryan has served Illinois for over 30 years by holding various offices in both state and local government. In 1966 Ryan began his public service when appointed to fill a vacant seat on the Kankakee County Board of Supervisors. (R. at 250.) Ryan was subsequently re-elected and served on the Kankakee County Board from 1966 to 1972 including holding the position of Chairman from 1970 to 1972. (R. at 250.)

¹ Plaintiff's Affidavit attached as Exhibit 1 to his Amended Motion is stricken as it was not presented to GARS and is not a part of the Administrative Record.

After spending five years and eleven months holding offices at the county level, Ryan moved to statewide offices. Ryan was elected to the Illinois General Assembly as a representative for the Kankakee area in November, 1972. (R. at 250.) Subsequently re-elected four times, Ryan remained Kankakee's representative in the General Assembly until 1982. (R. at 250.) Ryan rose to prominence while serving in the General Assembly by being elected minority leader from 1976 to 1980 and Speaker of the House from 1980 to 1982. (R. at 250.) Ryan used these prominent positions in the General Assembly as a springboard to advance his political career.

In 1982 Ryan, as running mate to then Governor James R. Thompson ("Thompson"), was elected as Lieutenant Governor. (R. at 250.) Ryan and Thompson were re-elected in 1986. After completing his second term as Lieutenant Governor Ryan ran for and was elected Secretary of State in 1990. (R. at 250.) Ryan continued to hold the office of Secretary of State for two terms lasting until 1999. (R. at 250.) Ryan's career culminated with his election and service as Governor from 1999 to 2003. (R. at 251.)

In 2003 a federal grand jury indicted Ryan on charges of racketeering, conspiracy, mail fraud, false statements to the Federal Bureau of Investigation, and income tax violations. (*See* R. at 90 – 189.) The indictment arose solely out of Ryan's conduct as Secretary of State and as Governor. On April 17, 2006, a federal jury found Ryan guilty of eighteen counts of criminal activity.² (R. at 251.) All of the offenses Ryan was convicted for constitute felonies under federal law. *See* 18 U.S.C. § 3559. As a result of his conviction, the District Court sentenced Ryan to six and one half years incarceration. Ryan is currently pursuing an appeal of his conviction in the United States Court of Appeals for the Seventh Circuit.

² The District Court later dismissed two of the eighteen counts based on its determination that there was insufficient evidence presented at trial to support the convictions.

On September 19, 2006, as a result of his felony convictions, the acting Secretary of the Illinois State Retirement System (“GARS”) suspended Ryan’s retirement Annuity. (R. at 208-17.) The suspension was retroactive to the date of Ryan’s sentencing, September 6, 2006. (R. at 208-17.)

Discussion

In this case, the facts are not in dispute. It is uncontested that Ryan’s convictions are based on conduct arising solely out of his tenure as Secretary of State and Governor.³ Rather, the parties dispute the interpretation of the pension forfeiture provision of the statute establishing the General Assembly Retirement System. Therefore, because the Court is solely asked to interpret the statute, the proper review in this case is *de novo*. See Zbiegien v. Illinois Dep’t of Labor, 156 Ill. App. 3d 395, 399 (1st Dist. 1987) (“[A] reviewing court is not bound to give the same deference to an agency’s conclusions of law as it gives to its findings of fact and cannot let stand a decision based upon an erroneous construction of a statute.”).

A court’s primary goal in interpreting a statute is to ascertain and give effect to the intention of the legislature. Devoney v. Ret. Bd. of the Policemen’s Annuity & Benefit Fund for the City of Chicago, 199 Ill. 2d 414, 419 (2002). The statutory language is the best source of legislative intent and where the statutory language is clear and unambiguous, the language should be enforced as written. Taddeo v. Bd. of Trs. of the Illinois Municipal Retirement Fund, 216 Ill. 2d 590, 595 (2005), *citing* Mattis v. State Univ. Ret. Sys. et al., 212 Ill. 2d 58, 76 (2004). However, where the statutory language is susceptible to multiple interpretations, legislative intent may be inferred from considering the entire act, its objective, and the possible consequences of different interpretations. Taddeo, 216 Ill. 2d at 595-96, *citing* Shields v.

³ Ryan is currently pursuing an appeal of his conviction in the United States Court of Appeals for the Seventh Circuit. Ryan reserves the right to later contest forfeiture of the portion of his pension arising out of his years as Secretary of State and Governor in the event that his appeal is granted.

Judges' Ret. Sys. of Illinois et al., 204 Ill. 2d 488, 494 (2003). In interpreting pension statutes, the court should construe the statute liberally in favor of the rights of the pensioner. Id. at 596, *citing Shields*, 204 Ill. 2d 488, 494 (2003).

I. The Board Properly Denied Ryan's Pension In Its Entirety Because Ryan Was Convicted of a Felony in Connection With His Service as a Member.

In this case, the parties contest the Board's interpretation of the "Felony Conviction" provision of the Pension Code. The Pension Code's "Felony Conviction" provision provides, "[n]one 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.*" 40 ILCS 5/2-156 (emphasis added).⁴ The Pension Code Defines member as follows:

Member. "Members": Members of the General Assembly of this state including those persons who enter military service while a member of the General Assembly and any persons serving as Governor, Lieutenant Governor, Secretary of State, Treasurer, Comptroller, or Attorney General for the period of service in such office.

Any person who has served for ten or more years as Clerk or Assistant Clerk for the House of Representatives, Secretary, or Assistant Secretary of the Senate, or any combination thereof, may elect to become a member of this System while therenceforth engaged in such service by filing a written election with the Board. Any person so electing shall be deemed an active member of the General Assembly for the purpose of validating and transferring any service credits earned under any of the funds and systems established under Articles 3 through 18 of this Code. 40 ILCS 5/2-105.

In determining whether a felony arises out of or is in connection with service as a member, the critical inquiry is whether a nexus exists between the employee's criminal conduct and their official duties. Devoney, 199 Ill. 2d at 424-25. By using the phrase "none of the

⁴ The forfeiture provision at issue is substantially similar to provisions governing the pensions of law enforcement (40 ILCS 5/5-227), participants in the Illinois Municipal Retirement System (40 ILCS 5/7-219), participants in the Municipal Employees', Officers', and Officials' Annuity and Benefit Fund (40 ILCS 5/8-251), county employees (40 ILCS 5/9-235), employees under the Laborers' and Retirement Board Employees' Annuity and Benefit Fund (40 ILCS 5/11-230), sanitary district employees (40 ILCS 5/13-807), state employees (40 ILCS 5/14-149), judges (40 ILCS 5/18-163), and others (*see, e.g.*, 40 ILCS 5/16-199).

benefits” in conjunction with “any felony arising out of or in conjunction with his or her service as a member,” the plain language of the statute mandates *a total forfeiture of all benefits* when a nexus exists between the felony conviction and the participant’s service as a member. Moreover, “member,” as defined by the statute includes multiple positions in the State of Illinois. Thus, although a participant may hold multiple distinct offices in the State of Illinois, such as a member of the General Assembly, Lieutenant Governor, Secretary of State and Governor, the participant status as a “member” for purposes GARS does not change. Therefore, pursuant to the plain language of the statute, regardless of whether a participant held multiple offices or positions with the state, a felony connection with a nexus to the participant’s service as a member serves to cause a forfeiture of *all benefits*.

- a. Case law interpreting substantially similar forfeiture provisions supports the Board’s order terminating Ryan’s pension in its entirety.

Illinois courts have not been presented with an opportunity to interpret Section 2-156 of GARS. However, Illinois courts have had the opportunity to construe a substantially similar provision in the Illinois Municipal Retirement Fund subsection of the Pension Code. Taddeo v. Bd. of Trs. of Illinois Mun. Ret. Fund, 216 Ill. 2d 590 (2005); Wells v. Bd. of Trs. of the Illinois Mun. Ret. Fund, 361 Ill. App. 3d 716 (2d Dist. 2005), *appeal denied* 217 Ill. 2d 627 (2006); Grever v. Bd. of Trs. of the Illinois Mun. Ret. Fund, 353 Ill. App. 3d 263 (2d Dist. 2004).

Although it is undisputed that a nexus exists between Ryan’s felony conviction and his service as Secretary of State and Governor, the parties dispute whether this nexus is sufficient to terminate the portion of Ryan’s pension attributable to prior positions with the State of Illinois. Where an employee holds multiple public offices with different municipalities and is convicted of a felony that affects one office, but not the others, the employee is barred from receiving pensions solely from the affected office. Taddeo, 216 Ill. 2d at 598-600; Grever, 353 Ill. App. 3d

at 263 (“[A] conviction of a felony in connection with service to a particular employer results in the forfeiture of benefits earned only from that particular employment relationship.”). However, where the employee’s pension is the result of employment, albeit in different positions, with solely one employer, a felony arising out of or in connection with any one of the positions causes the employee to forfeit all pension benefits earned while serving that employer. Wells v. Bd. of Trs. Of the Illinois Mun. Ret. Fund, 361 Ill. App. 3d 716, 723 (2d Dist. 2005) (“[W]e hold that *section 7-219* applies to whatever benefits are generated by service to a single employer regardless of the particular positions held by the employee during that employment.”).

In Taddeo, the plaintiff was concurrently employed by Cook County and Melrose Park. Taddeo, 216 Ill. 2d at 593. Plaintiff served as a township supervisor for Proviso Township in Cook County from 1969 until 1999 and also served as Mayor of Melrose Park from 1977 until 1997. Id. From 1977 until 1997, due to his dual employment, the plaintiff earned concurrent service credits under the Pension Code. Id. In 1999, plaintiff entered a guilty plea in the United States District Court for the Northern District of Illinois and was therefore convicted of felonies for extortion under the color of official right and making false statements on a federal income tax return. Id. The conviction solely related to plaintiff’s position as Mayor of Melrose Park and in no way related to his employment as township supervisor for Proviso Township. Id. at 597-98. The Illinois Supreme Court found that nothing in the forfeiture provision was intended to encompass the situation where an employee’s entitlement to pension is based on employment with two distinct municipalities. Id. at 598. Because the court found that allowing retention of the untainted pension did not offend the forfeiture provision’s goal of discouraging official malfeasance, the court allowed the plaintiff to retain the untainted pension. Id. at 599.

The Second District considered a similar situation in Grever. In Grever, the plaintiff also held two positions with different municipalities. The plaintiff served as supervisor of Ela Township in Lake County from 1991 until 2001 and also was a member of the Lake County Board and a commissioner for the Lake County Forest Preserve District from 1990 until 2000. Grever, 353 Ill. App. 3d at 264. Plaintiff was convicted of a felony in connection with his position as Township supervisor. Id. As a result of his conviction, the Illinois Mutual Retirement Board Fund disqualified plaintiff from receiving pension benefits from the fund. Id. On appeal, the court found that although the pension statute at issue did not explicitly limit the forfeiture clause's scope to benefits from service to any particular employee, "such a limitation is reasonably implicit." Id. at 267. Therefore, the court concluded that a conviction of a felony in connection with service to a particular municipal employer results in forfeiture of the pension benefits earned only from that particular employer. Id.

In Wells, the court was presented with the issue of whether an employee who held multiple positions under a single employer forfeited all benefits earned upon a felony conviction. In Wells, plaintiff was employed by the Village of Antioch for 27 years. Wells, 361 Ill. App. 3d at 718. The plaintiff's employment with the village began in 1974 as a laborer, from 1976 until 1987 served as foreman of the village's water and sewer department and in 1987 became the director of Antioch's public works department. Id. The remainder of the plaintiff's tenure with the village, 1990 until 2001, was spent as the village administrator. Id. In 2002 plaintiff pleaded guilty to two felonies: forgery and perjury. Id. Based on these guilty pleas, the Board of Trustees of the Illinois Municipal Retirement Fund terminated plaintiff's pension. Id. at 719. In

reviewing the termination of plaintiff's pension, the court distinguished both Grever and Taddeo.⁵

In this case, the nexus between Ryan's felony convictions his employment as Secretary of State and Governor also establishes the necessary link to deny Ryan's pension benefits in their entirety. Affirming the Board's order terminating Ryan's pension is consistent with Taddeo, Wells, and Grever. The Illinois pension forfeiture jurisprudence makes a distinction between pensions earned under a single employer and pensions earned under multiple employers. Compare Taddeo, 216 Ill. 2d 590 and Grever, 353 Ill. App. 3d 263 with Wells, 361 Ill. App. 3d 716. The Taddeo and Grever cases are both consistent with the Wells case. In both Taddeo and Grever, the plaintiff was concurrently earning pensions from two distinct municipalities. Taddeo, 216 Ill. 2d at 593; Grever, 353 Ill. App. 3d at 264. In those cases, the court upheld forfeiture of all pension benefits from the employer with which the felony had a nexus. Taddeo, 216 Ill. 2d at 600; Grever, 353 Ill. App. 3d at 267. Unlike Taddeo and Grever, the petitioner in Wells only earned pension benefits from one employer. Wells, 361 Ill. App. 3d at 718. However, the court in Wells decided, after considering Taddeo and consistent with both Taddeo and Grever, to uphold forfeiture of all of the plaintiff's pension benefits because a nexus existed between the plaintiff's service as an employee and the felony conviction. Id. at 719.

Taddeo and Grever are consistent with Wells, and the Board's termination of Ryan's pension in its entirety is consistent with all three decisions. Like the plaintiff in Wells, Ryan's service for the General Assembly and as Lieutenant Governor, Secretary of State and Governor were all for a single employer – the State of Illinois. (R. at 250-51). The forfeiture provision was triggered when the federal district court convicted Ryan of eighteen counts of criminal

⁵ At the time Wells was decided the Illinois Supreme Court had not issued the Taddeo opinion. Therefore, the Wells Court's consideration of Taddeo was limited to the appellate court decision. However, the Illinois Supreme Court affirmed the First District opinion in Taddeo on the same reasoning employed by the First District.

activity. Thus, pursuant to Section 2-156 Ryan must forfeit all pension benefits earned as a member, pension benefits earned while working for the State, regardless of the fact that he held differing positions.

Ryan argues that Wells is distinguishable based on the fact that the plaintiff in Wells had a single term of continuous employment during which he worked in various positions based on promotion. (Ryan's Reply at 3.) Ryan argues that unlike Wells, he was not promoted from position to position through a single municipal entity but rather held four distinct offices that he ran for and was elected to on ten occasions. (Ryan's Memo. in support of Summary Judgment at 10.) This distinction, however, is not persuasive. The Illinois Supreme Court has already indirectly considered the issue of whether the clearly delineated terms of public office and the requirement to be elected to office affect the forfeiture provision in pension statutes. *See Taddeo*, 216 Ill. 2d 590. In *Taddeo*, the plaintiff was convicted of a felony in connection with his position as Mayor of Melrose Park. *Id.* at 593. Although he served as Mayor from 1972 until 1997, the felony only dealt with conduct that occurred from 1988 until 1994. *Id.* Clearly, the plaintiff's 25 years as Mayor of Melrose Park constitutes more than one term and would require more than one election. The Illinois Supreme Court, however, did not find the multiple terms to affect the application of the forfeiture provision and found that the plaintiff did forfeit all of his pension attributable to employment by the city. *Id.* at 598. Similarly, because Ryan was a "member" for purposes of GARS for the duration of his employment with the State, the fact that such employment consisted of four distinct offices and ten elections does not affect the result.

- b. Allowing Ryan to retain any pension benefits based on his employment with the State of Illinois would allow future participants to immunize their pensions and would diminish the deterrent effect of Section 2-156 on official malfeasance.

The purpose of the pension forfeiture provision is to, “discourage official malfeasance by denying the public servant convicted of unfaithfulness to his trust the retirement benefits to which he otherwise would have been entitled.” Devoney, 199 Ill. 2d at 418 *quoting* Kener v. State Employees’ Ret. Sys., 72 Ill. 2d 507, 513 (1978). Allowing Ryan to retain the portion of his pension earned before he became Secretary of State would trigger many of the same concerns addressed in Wells. *See* Wells, 361 Ill. App. 3d at 722-23. For example, as the Wells Court recognized, “[a]n employee who changes positions on a fairly regular basis would effectively immunize from the statute much of his or her pension.” Id. This concern is even more acute in the present case than in Wells. Whereas in Wells, the plaintiff advanced via promotions between positions that could theoretically continue indefinitely, elected officials necessarily face re-election on a regular basis. As such, provided a participant successfully maintained a career in politics, he or she would effectively be able to immunize their pension approximately every two to four years. The legislature enacted Section 2-156 in order to deter official misconduct. Allowing a pension to be immunized by changing positions or being re-elected would not further the purpose of Section 2-156. Accordingly, the Board’s decision terminating Ryan’s pension in its entirety is affirmed.

II. Ryan’s Kankakee County Service

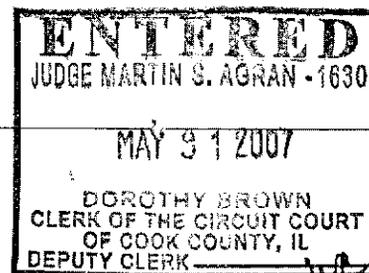
Prior to serving the State of Illinois, Ryan worked for Kankakee County. Although Ryan accrued Retirement Annuity while a Kankakee employee, it was credited to his Illinois Municipal Retirement Fund (“IMRF”) account, a separate and distinct pension system under the Pension Code. *See* 40 ILCS 5/7-101 *et seq.* If Ryan earned sufficient credits under the IMRF to

be entitled to a pension and had left those credits in the IMRF, Ryan would be allowed to retain his Retirement Annuity arising out of his service to Kankakee County. Kankakee County and the State of Illinois are distinct employers pursuant to Taddeo. However, Ryan is not entitled to a Retirement Annuity based on his service to Kankakee County because he has not earned sufficient credits to be entitled under the IMRF. Ryan earned five years and eleven months of creditable service in the IMRF. (R. at 250.) This, however, does not satisfy the requirement of eight years of service to be entitled to an IMRF pension. See 40 ILCS 5/7-141(a) (“A participating employee ... shall be entitled to a retirement annuity provided ... [i]f he first became a participating employee after December 31, 1961, he has at least 8 years of service....”).

Conclusion

The decision of the Board to terminate George H. Ryan Sr.’s pension benefits in their entirety is affirmed.

ENTER,



Judge

Judge's No