



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 24, 2015

FILE NO. 15-004

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 of August 21, 2015, inquiring whether, pursuant to section 14-149 of the Illinois Pension Code (the Pension Code) (40 ILCS 5/14-149 (West 2014)), Michael L. Cole, a member of the State Employees' Retirement System, has forfeited his pension benefits as a result of his conviction of the offense of custodial sexual misconduct (720 ILCS 5/11-9.2(a)(1) (West 2013 Supp.)). For the reasons stated below, it is my opinion that Michael L. Cole's criminal conviction requires the forfeiture of his pension benefits.

BACKGROUND

According to the records of the Circuit Court of the Eleventh Judicial Circuit, on April 22, 2014, the State filed a two-count Information against Cole. Information, *People v. Cole*, Docket No. 14-CF-26 (Circuit Court, Logan County) (Information). Cole subsequently pled guilty to one count of custodial sexual misconduct, a Class 3 felony under Illinois law (*see* 720 ILCS 5/11-9.2(c) (West 2013 Supp.)). Fully Negotiated Plea Agreement, *People v. Cole*, Docket No. 14-CF-26 (Circuit Court, Logan County). The court sentenced Cole to 30 months probation and 200 hours of public service work. Judgment and Sentence and Certificate of Conditions, *People v. Cole*, Docket No. 14-CF-26 (Circuit Court, Logan County).

Count One of the Information, pursuant to which the guilty plea and conviction were entered, alleged that, on or between January 2014 through February 2014, while Cole was employed by the Illinois Department of Corrections at the Department's Logan Correctional Center, he "knowingly engaged in sexual penetration with * * * a person who was in [the] custody of [the] Logan Correction[al] Center." Information, at 1.

ANALYSIS

Section 14-149 of the Pension Code requires the forfeiture of a participant's retirement annuities and other pension benefits upon his 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 service as an employee*. (Emphasis added.)

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The purpose of the felony forfeiture provisions in the Pension Code is to discourage official misconduct 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" 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, 1015-16 (2006), *appeal denied*, 222 Ill. 2d 567 (2006).

Cole's conviction of custodial sexual misconduct clearly related to, arose out of, or was in connection with his service as an employee of the Illinois Department of Corrections. Indeed, the offense of custodial sexual misconduct is predicated, upon other things, on the commission of an act of sexual penetration by an employee of a penal system with a person who is in the custody of the same penal system. At the time of the offense, Cole was employed by the Department of Corrections, a penal system, as a correctional officer assigned to the Logan Correctional Center. He engaged in an act of "sexual penetration with * * * a person who was in [the] custody of [the] Logan Correction[al] Center[.]" a facility operated by the Department of Corrections. Accordingly, were it not for his employment by the Department of Corrections,

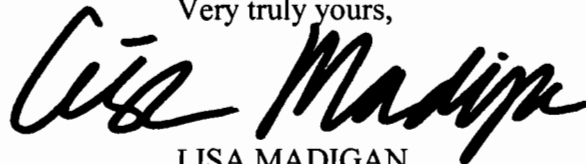
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Cole would not have been in a position to commit the offense for which he was convicted. This is precisely the type of reprehensible misconduct that section 14-149 of the Pension Code was designed to discourage.

CONCLUSION

Based on the records of the Circuit Court of the Eleventh Judicial Circuit, it is my opinion that Michael L. Cole has forfeited his pension 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, pursuant to Illinois case law. *Shields v. Judges' Retirement System*, 204 Ill. 2d 488, 497 (2003); *see also Shields v. State Employees Retirement System*, 363 Ill. App. 3d 999 (2006), *appeal denied*, 219 Ill. 2d 598 (2006).

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