



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

September 16, 2013

13-001

PENSIONS:  
Felony Forfeiture  
of Pension Benefits

Mr. Timothy B. Blair  
Executive Secretary  
State Employees' 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 14-149 of the Illinois Pension Code (the Pension Code) (40 ILCS 5/14-149 (West 2012)), Robert J. Eizenga, a member of the State Employees' Retirement System, has forfeited his pension benefits as a result of his conviction of the offense of sexual misconduct with a person with a disability (720 ILCS 5/11-9.5(b)(1) (West 2008)). For the reasons stated below, it is my opinion that Robert J. Eizenga's criminal conviction requires the forfeiture of his pension benefits.

## BACKGROUND

On January 22, 2013, Robert J. Eizenga was convicted upon a plea of guilty of one count of sexual misconduct with a person with a disability, in violation of subsection 11-9.5(b)(1) of the Criminal Code of 1961 (the Criminal Code) (720 ILCS 5/11-9.5(b)(1) (West 2008)). *People v. Eizenga*, Docket No. 11-CR-2223 (Circuit Court, Cook County). The multi-count indictment, pursuant to which the conviction was entered, charged that, on or about April 25, 2010, and continuing through May 4, 2010, while Eizenga was employed as a forensic psychologist by the Illinois Department of Human Services (IDHS), he knowingly engaged in an act of sexual penetration with a person with a disability<sup>1</sup> who was under the care and custody<sup>2</sup> of IDHS at the Tinley Park Mental Health Center, a State-operated facility. Indictment, Count 2, *People v. Eizenga*, Docket No. 11-CR- 2223 (Circuit Court, Cook County). The offense of sexual misconduct with a person with a disability is a Class 3 felony under Illinois law. *See* 720 ILCS 5/11-9.5(e) (West 2008).

## ANALYSIS

Section 14-149 of the Pension Code provides, with respect to members of the State Employees' Retirement System:

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<sup>1</sup>"Person with a disability" means a person diagnosed with a "developmental disability" or a "mental illness," as those terms are defined in the Mental Health and Developmental Disabilities Code. 720 ILCS 5/11-9.5(a)(1) (West 2008); *see* 405 ILCS 5/1-106, 1-129 (West 2008).

<sup>2</sup>"Care and custody" means "admission to a State-operated facility." 720 ILCS 5/11-9.5(a)(4) (West 2008). A "state-operated facility" is a "developmental disability facility" or a "mental health facility," as those terms are defined in the Mental Health and Developmental Disabilities Code. 720 ILCS 5/11-9.5(a)(2) (West 2008); *see* 405 ILCS 5/1-107, 1-114 (West 2008).

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 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).

Eizenga's conviction of sexual misconduct with a person with a disability clearly related to, arose out of, or was in connection with his service as an employee of IDHS. Indeed, the offense to which Eizenga pled guilty is predicated upon the fact that he was an employee of

Mr. Timothy B. Blair - 4

IDHS, and that the victim was under the care and custody of IDHS, when the offense occurred. Eizenga's employment with IDHS provided him with access to his victim. Further, as a forensic psychologist at the mental health facility, Eizenga was aware that his victim suffered from a condition that caused her to be admitted to the State-operated facility for appropriate care. Eizenga took advantage of his victim's vulnerable condition in committing this horrible crime. This is precisely the type of reprehensible misconduct which section 14-149 of the Pension Code was designed to discourage.

#### CONCLUSION

Based on the records of the Circuit Court of Cook County, it is my opinion that Robert J. Eizenga 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 smaller, more compact script than the last name "Madigan".

LISA MADIGAN  
ATTORNEY GENERAL