



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

April 6, 1999

**Jim Ryan**  
ATTORNEY GENERAL

FILE NO. 99-006

PENSIONS:  
Felony Forfeiture of General Assembly  
Retirement System Benefits

Michael L. Mory  
Executive Secretary  
State Retirement Systems  
2101 South Veterans Parkway  
Springfield, Illinois 62794-9255

Dear Mr. Mory:

I have your letter wherein you inquire whether former Senator John A. D'Arco, Jr., will be eligible to receive retirement benefits from the General Assembly Retirement System following his conviction for violation of certain Federal statutes. For the reasons hereinafter stated, it is my opinion that Mr. D'Arco has forfeited his right to any pension benefits.

Section 2-156 of the Illinois Pension Code (40 ILCS 5/2-156 (West 1996)), which relates to the General Assembly Retirement System, provides:

"Felony conviction. None of the benefits herein provided for shall be paid to any person who is convicted of any felony relat-

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ing 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."

Mr. D'Arco served in the Illinois General Assembly from 1973 until 1992.

On May 20, 1992, a judgment of conviction and sentence was entered by the Federal District Court for the Northern District of Illinois in United States v. D'Arco, Docket No. 90 CR 1043. The judgment sets forth the conviction of former Senator D'Arco for extortion in violation of the Hobbs Act (18 U.S.C. § 1951) and for making false statements under penalty of perjury in violation of the Internal Revenue Code (26 U.S.C. § 7206). A violation of each statute is a felony. Pursuant to his conviction, Mr. D'Arco was sentenced to three years imprisonment followed by three years supervised release, 360 hours of community service, a \$10,000 fine and \$7,500 restitution.

The indictment underlying the conviction details the charges against Mr. D'Arco. The counts concerning the Hobbs Act allege that, on two occasions, Mr. D'Arco solicited and accepted

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payment of money in return for his promise to procure certain legislation and favorable action by the Director of Insurance with respect to an insurance producer licensing requirement. The other count alleges Mr. D'Arco's failure to report as income the proceeds of the extortion scheme.

In Kerner v. State Employees' Retirement System (1978), 72 Ill. 2d 507, the court held that the phrase "convicted of any felony" in the felony forfeiture section in the Pension Code provisions relating to the State Employees' Retirement System (see Ill. Rev. Stat. 1975, ch. 108 1/2, par. 14-199, now codified at 40 ILCS 5/14-149 (West 1996)) referred to all felonies, whether so classified under State or Federal law. The reasoning of the court in that case is equally applicable to section 2-156 of the Pension Code. Therefore, the only issue to be determined is whether the offenses underlying Mr. D'Arco's conviction related to or arose out of or were in connection with his service as a member of the General Assembly.

The board of trustees of the Retirement System has initiated a review of Mr. D'Arco's eligibility for benefits. In a letter to the Executive Secretary of the State Retirement Systems, Mr. D'Arco's attorneys claim that his receipt of money, upon which his convictions were predicated, was actually a fee for legal services and that he did not receive the money in his

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capacity as a legislator. They argue that his convictions, therefore, did not arise out of his service as a legislator. This claim, however, was implicitly rejected by the trial court. The indictment handed down by the Federal Grand Jury expressly alleged that the extortion of moneys in violation of the Hobbs Act was "induced under color of official right". Conviction of the Hobbs Act violations required that the government prove the allegations of the indictment that the payments in question were bribes for the procurement of legislation and favorable administrative action.

The board of trustees of the General Assembly Retirement System is obligated to make a determination of eligibility based upon the official record of Mr. D'Arco's felony convictions. It is neither obligated nor authorized to re-try the case against Mr. D'Arco, or to reject as untrue facts necessarily found to be true by the court.

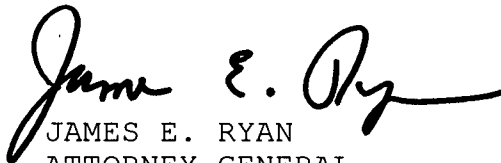
But for his status as a State Senator, Mr. D'Arco would not have been in a position to extort money "under color of official right" in return for procuring legislation. In fact, had he not been a legislator, his acceptance of money for "lobbying" for legislation would not have violated the Hobbs Act. The income which he failed to report was that which he received as a result of the extortion committed as a Senator. It is clear that

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his convictions on both grounds arose from his service as a member of the General Assembly, for purposes of section 2-156 of the Illinois Pension Code.

Based upon the authorities cited, it is my opinion that Mr. D'Arco has forfeited his right to receive any benefits from the General Assembly Retirement System, other than the refund of his contributions to the System.

Sincerely,

  
JAMES E. RYAN  
ATTORNEY GENERAL