



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

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FILE NO. 15-003

PENSIONS:
Felony Forfeiture
of Pension Benefits

Mr. Timothy Blair
Executive Secretary
General Assembly Retirement System
2101 South Veterans Parkway
P.O. 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 2012)), former Illinois State Representative Keith Farnham has forfeited his pension benefits under the General Assembly Retirement System as a result of his conviction of the offense of transportation of child pornography (18 U.S.C. §2252A(a)(1) (2012)). For the reasons stated below, it is my opinion that Keith Farnham's criminal conviction requires that he forfeit his pension benefits under section 2-156 of the Pension Code.

BACKGROUND

On May 22, 2014, the United States filed a four-count Indictment against Farnham in the United States District Court for the Northern District of Illinois. Indictment, *United States v. Farnham*, No. 14 CR 237 (N.D. Ill. May 22, 2014) (Indictment). Farnham subsequently pled guilty to one count of transportation of child pornography. Plea Agreement, *United States v. Farnham*, No. 14 CR 237 (N.D. Ill. December 5, 2014) (Plea Agreement). On March 19, 2015, the court sentenced him to a term of imprisonment of 96 months and a term of five years of supervised release. The court also ordered Farnham to pay a fine of \$30,000.00. The offense of transportation of child pornography is a felony under Federal law. *See* 18 U.S.C. §§2252A(b)(1), 3559 (2012).

Count Three of the Indictment, pursuant to which the conviction was entered, indicates that, on or about November 25, 2013, in Elgin, Illinois, Farnham knowingly transported and caused to be transported two computer files containing child pornography. Indictment, at 3. In the Plea Agreement, Farnham admits that, on or about November 25, 2013, he used two Yahoo! email addresses "to receive, trade, and distribute child pornography while at his [State legislative district] office and residence in Elgin, Illinois, among other locations."¹ Plea Agreement, at 2-3. In addition, Farnham admits that he "possessed images and videos depicting child pornography on computers and electronic storage devices in his residence, car and offices[.]" Plea Agreement, at 3.

¹Farnham served as an Illinois State Representative for the 43rd District from January 2009 through March 19, 2014. His district office was located in Elgin, Illinois. Illinois General Assembly, Biography, former Representative Keith Farnham, *available at* <http://www.ilga.gov/house/rep.asp?MemberID=1953>.

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The Government's Sentencing Memorandum provides additional details regarding Farnham's conduct. Specifically, Farnham possessed, received, and distributed images of child pornography "from his home, his representative office in Elgin, his representative office in Springfield, and a hotel in Springfield, among other locations." Sentencing Memorandum, *United States v. Farnham*, No. 14 CR 237 (N.D. Ill. March 12, 2015) (Sentencing Memorandum), at 3. Moreover, Farnham "actively possessed and traded child pornography using taxpayer-funded property and on government time." Sentencing Memorandum, at 6. The Sentencing Memorandum contains additional details regarding how Farnham committed his acts:

[W]hen the Illinois House of Representatives was not in session, [Farnham]'s Yahoo! account was logged into from his residence or office in Elgin; but when the Illinois House of Representatives was in session, [Farnham]'s Yahoo! account was logged into from a hotel in Springfield, Illinois, or from a network used by a committee with the Illinois House of Representatives. Furthermore, during searches of [Farnham]'s residence and office, law enforcement recovered a hard drive under the driver's seat in [Farnham]'s government vehicle and a Dell Tower in his office labeled "Property of the State of Illinois House of Representatives," both of which contained images and videos depicting child pornography. Sentencing Memorandum, at 6.

ANALYSIS

Section 2-156 of the Pension Code requires the forfeiture of a participant's retirement annuities and other pension benefits 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.)

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The public unquestionably has the right to conscientious service from those in governmental positions. The purpose of the felony forfeiture provisions in the Pension Code is to enforce that right and discourage official malfeasance 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 of Illinois*, 72 Ill. 2d 507, 513 (1978), *cert. denied*, 441 U.S. 923, 99 S. Ct. 2032 (1979). Accordingly, whether 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 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); Ill. Att'y Gen. Op. No. 11-003, issued December 8, 2011; Ill. Att'y Gen. Op. No. 06-002, issued September 12, 2006.

As detailed in the Indictment, the Plea Agreement, and the Sentencing Memorandum, Farnham's conviction for transportation of child pornography related to, arose out of, and was in connection with his service as a member of the Illinois General Assembly. As a member of the General Assembly, Farnham was under a duty to use public property only for lawful, public purposes. *See generally*, Ill. Const. 1970, art. VIII, §1. While serving as a member of the Illinois General Assembly, however, Farnham clearly violated that duty by misappropriating the State's computers, the State's internet access system, his State legislative district office, and his State compensated time to engage in the reprehensible conduct which

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resulted in his conviction. If he were not a member of the Illinois General Assembly, Farnham would not have been in a position to misuse State property to engage in this crime. In these circumstances, section 2-156 of the Pension Code requires that Farnham forfeit his pension benefits.

CONCLUSION

Therefore, based on the records of the United States District Court for the Northern District of Illinois, it is my opinion that Keith Farnham's felony conviction requires forfeiture of his retirement benefits under the General Assembly Retirement System pursuant to section 2-156 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", written in a cursive style.

LISA MADIGAN
ATTORNEY GENERAL