



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 21, 2009

FILE NO. 09-005

PENSIONS:
Felony Forfeiture
of Pension Benefits

Mr. Tim Blair
Acting Executive Secretary
State Employees' Retirement System
2101 South Veterans Parkway
P.O. Box 19255
Springfield, Illinois 62794-9255

Dear Mr. Blair:

I have received your letter inquiring whether, pursuant to section 14-149 of the Illinois Pension Code (the Pension Code) (40 ILCS 5/14-149 (West 2008)), Keith E. Chambers, a member of the State Employees' Retirement System, has forfeited his pension benefits as a result of his conviction for the offenses of possession of child pornography and distribution of child pornography. For the reasons stated below, it is my opinion that Keith Chambers' criminal convictions require the forfeiture of his pension benefits.

According to the records of the United States District Court for the Central District of Illinois, on June 3, 2008, the United States filed a two-count indictment against Keith Chambers. *United States v. Chambers*, No. 08-30059 (C.D. Ill. June 3, 2008). Chambers subsequently pled guilty to possession and distribution of child pornography. *United States v. Chambers*, No. 08-30059 (C.D. Ill. December 24, 2008). The court sentenced him to a term of imprisonment of 120 months for possession of child pornography and 168 months for distribution of child pornography, with the terms to run concurrently. The offenses of possession of child pornography and distribution of child pornography are felonies under Federal law. *See* 18 U.S.C. §§3559, 2252A(a)(5)(B), (a)(2)(A), (b)(1), (b)(2).

Based on information contained in the court's records, investigators executed a search warrant against Chambers while he was employed as the Program Manager/Earthquake Coordinator for the Illinois Emergency Management Agency (IEMA). The Application and Affidavit for Search Warrant submitted to obtain the search warrant indicates that Chambers used an IEMA computer and the State's Internet access system to distribute child pornography. Specifically, the Affidavit states that Chambers, while using a computer located at IEMA, "communicated over the Internet with a police officer who was acting in an undercover capacity in a fetish/incest chat room * * * and provided child pornography to that undercover police officer." Application and Affidavit for Search Warrant, par. 7, In the Matter of the Search of the entire premises located at IEMA, 2200 South Dirksen Parkway, First Floor, No. S-08-20 (C.D.

Ill. April 30, 2008).¹ The Affidavit details Chambers' online chat communications with the undercover police officer, and describes the pornographic computer images that Chambers e-mailed to the officer from an IEMA computer. In executing the search warrant, the authorities searched Chambers' office at IEMA and seized his State computer. *See* Search Warrant, Attachments A, B, In the Matter of the Search of the entire premises located at IEMA, 2200 South Dirksen Parkway, First Floor, No. S-08-20 (C.D. Ill. May 7, 2008).

After entering an open plea of guilty to both counts of the indictment, Chambers, through his attorney, filed Defendant's Commentary on Sentencing Factors (a document that argues for a reduced sentence due to Chambers' purported diminished capacity). *United States v. Chambers*, No. 08-30059 (C.D. Ill. December 17, 2008). The Commentary confirms that Chambers used a computer at IEMA to visit pornographic web sites and chat sites and to download pornographic images:

Mr. Chambers was also doing some of these activities at work (chat sites, downloading images and so forth). He knew this was illegal and that he shouldn't be doing this at work on several levels and agonized over this at various times. He felt he was not fulfilling his obligation to his employer/not working when he should be. He knew this was just ust [*sic*] plain wrong. Defendant's Commentary on Sentencing Factors at 6-7, *United States v. Chambers*, No. 08-30059 (C.D. Ill. December 17, 2008).

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

¹The Affidavit upon which the search warrant was issued was based on an investigation conducted by the Office of the Illinois Attorney General, High Tech Crimes Bureau from March 27 through April 4, 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 malfeasance and to implement the public's right to conscientious service from government employees by denying a public servant convicted of unfaithfulness to his trust the retirement benefits to which he otherwise would be entitled. *Kerner v. State Employees' Retirement System*, 72 Ill. 2d 507, 513 (1978), *cert. denied*, 441 U.S. 923, 99 S. Ct. 2032 (1979); *Bauer v. State Employees' Retirement System*, 366 Ill. App. 3d 1007, 1013 (2006), *appeal denied*, 222 Ill. 2d 567 (2006). The pivotal inquiry in determining whether 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*, 366 Ill. App. 3d at 1014.

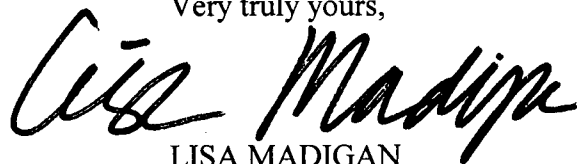
Chambers' conviction for possession and distribution of child pornography clearly related to, arose out of, and was in connection with his service as an employee of the State of Illinois. As a State employee, Mr. Chambers was under a duty to use public property only for a

Mr. Tim Blair - 5

lawful, public purpose. *See generally* Ill. Const. 1970, art. VIII, §1. In his position as Program Manager/Earthquake Coordinator with IEMA, Chambers misappropriated the State's computers and property and improperly used State work time to commit the depraved acts for which he was convicted. Were it not for his employment with IEMA, Chambers would not have been in a position to use State property to engage in this violation of the public trust. This is precisely the type of reprehensible misconduct which section 14-149 of the Pension Code was intended to discourage.

Therefore, based on the records of the United States District Court for the Central District of Illinois, it is my opinion that Keith Chambers' felony conviction requires that he forfeit his retirement benefits under the State Employees' Retirement System pursuant to section 14-149 of the Pension Code. Under the Pension Code, however, he retains the right to a refund of his contributions to the System. *Shields v. Judges' Retirement System of Illinois*, 204 Ill. 2d 488, 497 (2003), *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