



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

December 29, 2015

FILE NO. 15-007

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 inquiring whether, pursuant to section 14-149 of the Illinois Pension Code (the Pension Code) (48 ILCS 5/14-149 (West 2014)), Mary A. Hurst, a member of the State Employees' Retirement System, has forfeited her pension benefits as a result of her conviction of the offenses of theft (720 ILCS 5/16-1(a)(1)(A) (West 2012)), official misconduct (720 ILCS 5/33-3(b) (West 2012)), and wire fraud (720 ILCS 5/17-24(b) (West 2012)). For the reasons stated below, it is my opinion that Mary A. Hurst's criminal convictions require the forfeiture of her pension benefits.

## BACKGROUND

According to the records of the Circuit Court of the Twentieth Judicial Circuit, on September 10, 2015, Hurst was convicted, on a plea of guilty, of one count of theft, six counts of official misconduct, and five counts of wire fraud. Docket Entry, *People v. Hurst*, Docket No. 2015-CF-79 (Circuit Court, Randolph County). Hurst was sentenced to 30 months of probation and was ordered to pay \$114,819.00 in restitution to the State of Illinois. Certificate and Order of Probation, *People v. Hurst*, Docket No. 2015-CF-79 (Circuit Court, Randolph County).

The multi-count Information,<sup>1</sup> pursuant to which the guilty pleas were entered, charged that Hurst, in her official capacity as a Human Services Caseworker employed by the Illinois Department of Human Services (IDHS), performed acts that she knew violated the law. Information, Counts II, VIII through XII, *People v. Hurst*, Docket No. 2015-CF-79 (Circuit Court, Randolph County) (Information). Specifically, Hurst used her computer at IDHS' Family Community Resource Center in Randolph County to generate Illinois Link Card Authorization of Assistance Actions for fictitious clients and then obtained Link cards and PIN numbers to access funds from fictitious Supplemental Nutrition Assistance Program (SNAP) or Cash Grant accounts.<sup>2</sup> Information, Counts III through XII. Further, between March 1, 2012, and on or

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<sup>1</sup>On September 10, 2015, the State filed an Amended Information changing the theft count (Count I) from a Class X felony to a Class 1 felony. Amended Information, Count I, *People v. Hurst*, Docket No. 2015-CF-79 (Circuit Court, Randolph County).

<sup>2</sup>IDHS issues Illinois Link cards to individuals who are approved to receive cash assistance or SNAP benefits. See Illinois Department of Human Services Website, available at <http://www.dhs.state.il.us/page.aspx?item=30371>.

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about March 31, 2015, Hurst "knowingly obtained unauthorized control over property [of the owner, IDHS,] \* \* \* in an amount of value exceeding \$100,000.00, to wit: \$114,819.00 \* \* \* intending to deprive said owner permanently of the use and benefit of said property[.]" Amended Information, Count I, *People v. Hurst*, Docket No. 2015-CF-79 (Circuit Court, Randolph County). The offense of theft of property exceeding \$100,000.00 but not exceeding \$500,000.00 in value is a Class 1 felony under Illinois law (720 ILCS 5/16-1(b)(6) (West 2012)); the offenses of wire fraud and official misconduct are Class 3 felonies under Illinois law. 720 ILCS 5/17-24(d), 33-3 (West 2012).

#### ANALYSIS

Section 14-149 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 service as an employee.* (Emphasis added.)

The purpose of the Pension Code's felony forfeiture provisions 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 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); *Bauer v. State Employees' Retirement System*, 366 Ill. App. 3d 1007, 1015-16 (2006), *appeal denied*, 222 Ill. 2d 567 (2006).

Hurst's convictions of theft, wire fraud, and official misconduct clearly related to, arose out of, or were in connection with her service as an employee of IDHS. Indeed, the official misconduct offenses to which Hurst pled guilty are predicated on the fact that she was acting in her capacity as a public employee when the offenses occurred. Further, as a State employee, Hurst was under a duty to use public property only for lawful public purposes. *See generally* Ill. Const. 1970, art. VIII, §1. Hurst violated that duty by using her position as a Human Services Caseworker to misappropriate State property for her financial benefit. Were it not for her employment with IDHS, Hurst would not have been in a position to use the State's property to engage in this violation of the public trust. This is precisely the type of misconduct that section 14-149 of the Pension Code was designed to discourage.

#### CONCLUSION

Therefore, based on the records of the Circuit Court of the Twentieth Judicial Circuit, it is my opinion that Mary A. Hurst has forfeited her pension benefits pursuant to section 14-149 of the Pension Code. She does retain the right to a refund of her contributions to the

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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 written in a cursive, flowing style.

LISA MADIGAN  
ATTORNEY GENERAL