



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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PENSIONS:
Felony Forfeiture
of Pension Benefits

Mr. Timothy Blair
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Dear Mr. Blair:

I have your letter raising several questions regarding former Governor George H.

Ryan, Sr.'s receipt of pension benefits in light of his felony convictions. Specifically, you ask:

(1) Whether, pursuant to section 2-156 of the Illinois Pension Code (the Pension Code) (40 ILCS 5/2-156 (West 2004)), George H. Ryan, Sr. (Ryan) has forfeited his retirement annuities and other pension benefits (collectively referred to as "pension benefits"), under the General Assembly Retirement System (the System), as a result of his convictions of conspiracy to commit a substantive offense under the Racketeer Influenced and Corrupt Organizations Act (RICO) (18 U.S.C. §1962(d)), mail fraud (18 U.S.C. §§2, 1341, 1346), making false statements or representations (18 U.S.C. §1001(a)(2)), interfering with the administration of the internal revenue laws (26 U.S.C. §7212(a)), and filing false income tax returns (26 U.S.C. §7206(1));

(2) If Ryan has forfeited his pension benefits as a result of these convictions, has he forfeited all of his pension benefits or only those pension benefits that accrued while he served as Governor and Secretary of State, given that the conduct underlying his convictions occurred during his tenure in those offices;

(3) If Ryan has forfeited some or all of his pension benefits, should those benefits be suspended immediately or only after completion of all appeals stemming from his criminal convictions;

(4) If Ryan has forfeited some or all of his pension benefits, is he entitled to a refund of any contributions made to the System with respect to the forfeited benefits; and

(5) If Ryan has forfeited some or all of his pension benefits and is entitled to a refund of his contributions, should the System refund his contributions immediately following a vote to terminate his benefits, or only after the completion of all appeals stemming from his convictions?

For the following reasons, it is my opinion that:

(1) Ryan has forfeited his pension benefits because of felony convictions arising out of and in connection with his service as Governor and Secretary of State of the State of Illinois;

(2) Ryan has forfeited all of his pension benefits, not merely those that accrued while he served as Governor and Secretary of State;

(3) Ryan's pension benefits may be suspended upon his conviction, which is defined by statute as following the imposition of sentence;

(4) Ryan is entitled to a full refund of contributions he made to the System, including the amount that was transferred to the System from the Illinois Municipal Retirement Fund (the IMRF) (40 ILCS 5/7-101 *et seq.* (West 2004)) and the salary disparity contribution he made to the System with regard to the transferred IMRF credits; and

(5) The System must timely refund Ryan's contributions after voting to terminate his pension benefits and providing him with an opportunity to appeal that decision.

Background

On April 17, 2006, a Federal jury found Ryan guilty of 18 counts of criminal activity. The United States District Court for the Northern District of Illinois sentenced Ryan on September 6, 2006.¹ The second superseding indictment (the Indictment) details the conduct giving rise to the charges and the jury's guilty verdicts against him. *See* Second Superseding Indictment, *United States v. Warner*, No. 02 CR 506 (N.D. Ill. December 17, 2003).

Based on Count I of the Indictment, the jury found Ryan guilty of conspiracy to commit a substantive RICO offense (18 U.S.C. §1962(d)). Count I charged that Ryan conspired to conduct "the affairs of the [State of Illinois] through a pattern of racketeering activity" that involved predicate acts consisting of mail fraud, money laundering, extortion, obstruction of justice, and bribery from November 1990 to at least 2002. Indictment at 13. The Indictment charged that Ryan participated in the following conduct underlying the conspiracy: (1) awarding State contracts, leases, and low-digit license plates to various individuals in exchange for personal and financial benefits for himself, his friends, family, and political campaign committee; (2) terminating employees of the Inspector General's department within the Secretary of State's office and reorganizing the Inspector General's department to conceal political fundraising and other campaign activity performed on behalf of his political campaign committee by employees of the Secretary of State's office; (3) diverting labor and other resources of the Secretary of State's

¹The district court dismissed two of the 18 counts (Counts IX and X) upon determining that there was insufficient evidence presented at the trial to support the convictions. Memorandum Opinion and Order at 20-23, *United States v. Warner*, No. 02 CR 506 (N.D. Ill. September 7, 2006).

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office to benefit political campaigns sponsored or promoted by him and concealing such diversion; and (4) obstructing the grand jury investigation and misrepresenting, concealing, and hiding the purposes of and acts done in furtherance of the conspiracy. The Indictment further charged that, as part of the conspiracy, Ryan engaged in a scheme "to defraud the people of the State of Illinois and the State of Illinois of money, property and the intangible right to [his] honest services * * *, in his capacity as a state official, and of other state officials[.]" Indictment at 14; *see* 18 U.S.C. §§1341, 1346.

Under Counts II through VIII of the Indictment, the jury found Ryan guilty of mail fraud. Specifically, the Indictment charged that Ryan devised and "participated in [] a scheme and artifice to defraud the people of the State of Illinois, and the State of Illinois, of money, property and the intangible right to the honest services" of Ryan, other officials, and employees of the State, and in furtherance thereof, used the United States Mail to cause checks related to the scheme to be delivered. The scheme to defraud generally consisted of Ryan, his family, and friends receiving personal and financial benefits, such as cash, gifts, vacations, personal service benefits, and loans, from people seeking to do business with the State, when Ryan knew that such benefits were provided with the intent to influence and reward him in the performance of his official duties. In exchange for these benefits, Ryan gave out confidential information and took other steps to steer State contracts, leases, and contractual payments to certain individuals. He also awarded low-digit license plates as rewards to those who provided financial support to him and his political campaign committee.

In furtherance of the scheme, Ryan also authorized the termination or reassignment of the majority of inspectors in the Inspector General's department of the Secretary of State's office to discourage investigations into improper political fundraising activities at driver's license facilities and related official misconduct. Further, he authorized the diversion of resources of the Secretary of State's office to benefit himself and his campaign committee, including certain political campaigns he supported. In this regard, it was part of the scheme that, on or about September 1998, in Ryan's presence and in anticipation of law enforcement action, Secretary of State employees were directed to "clean up" campaign related documents on the premises of the Secretary of State's office, and that, after the directive, voluminous amounts of material were shredded. In furtherance of the scheme, from the early 1990s to 2002, Ryan also knowingly failed to disclose the financial benefits he received as required by law and made false statements to Federal investigators who were conducting the grand jury investigation. Between 1998 and 2002, Ryan caused to be delivered by mail checks to various entities relating to the scheme to defraud, thereby causing a violation of Federal law. Indictment at 17-65; *see* 18 U.S.C. §§1341, 1346.

Under Counts XI, XII, and XIII of the Indictment, the jury found that, in 2000 and 2001, Ryan made various false statements in three interviews with Federal agents who were conducting the grand jury investigation. The false statements related to: (1) the payment of lodging and expenses for trips to Jamaica; (2) the receipt of money during a trip to Jamaica; (3) details regarding the leasing of State office space in South Holland and Joliet, Illinois; (4) the

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circumstances surrounding the appointment of Lawrence E. Warner to a State board; (5) the finding of campaign fundraising tickets at a Secretary of State facility and the link between campaign ticket sales and improper licensing; and (6) Ryan's personal financial relationship with Warner.² Indictment at 68-71; *see* 18 U.S.C. §1001(a)(2).

All of the offenses on which the jury returned guilty verdicts and the court sentenced Ryan are felonies under Federal law. *See* 18 U.S.C. §3559.

Forfeiture

You first inquire whether, pursuant to section 2-156 of the Pension Code (40 ILCS 5/2-156 (West 2004)), Ryan has forfeited his pension benefits as a result of his convictions for the felony offenses described above. Section 2-156 provides:

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.*

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.³ (Emphasis added.)

²Counts XVIII through XXII address issues relating to the filing of false Federal income tax returns. Because the issues surrounding the forfeiture of Ryan's pension are adequately addressed based on Counts I through VIII and XI through XIII of the Indictment, it is not necessary to consider the counts relating to the filing of false tax returns at this time. Counts XIV through XVII of the Indictment were directed solely toward Ryan's co-defendant, Lawrence E. Warner, and are therefore also not considered.

³As discussed below, this language is substantially similar to the language in other pension benefit statutes addressing the forfeiture of benefits subsequent to felony convictions of public employees, judges, and public officers. *See* 40 ILCS 5/3-147, 5/4-138, 5/5-227, 5/6-221, 5/7-219, 5/8-251, 5/9-235, 5/11-230, 5/12-191, 5/13-807, 5/14-149, 5/15-187, 5/16-199, 5/17-149.1, 5/18-163 (West 2004).

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The purpose of the Pension Code's felony forfeiture provisions is to discourage official malfeasance and to implement the public's right to conscientious service from those in governmental positions by denying the public servant convicted of unfaithfulness to his trust the pension benefits to which he otherwise would be entitled. *Kerner v. State Employees' Retirement System of Illinois*, 72 Ill. 2d 507, 513 (1978) (interpreting section 14-149 of the Pension Code (then codified at Ill. Rev. Stat. 1975, ch. 108½, par. 14-199)), *cert. denied*, 441 U.S. 923, 99 S. Ct. 2032 (1979). The pivotal inquiry in determining whether a felony is "relat[ed] to or ar[ose] out of or in connection with" public service is 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); *DiFiore v. Retirement Board of the Policemen's Annuity & Benefit Fund of the City of Chicago*, 313 Ill. App. 3d 546, 551 (2000); Ill. Att'y Gen. Op. No. 99-006, issued April 6, 1999.

Ryan's convictions clearly related to, arose out of, and were in connection with his service in offices covered by the System. The facts underlying the offenses demonstrate that Ryan used his positions as Secretary of State and Governor to obtain personal and financial benefits for himself, his family, his friends, and his political campaign committee. He then made false statements and took other steps to conceal and obstruct the investigation into his criminal wrongdoing and the wrongdoing of others. As alleged in the Indictment, as part of the racketeering conspiracy and the scheme to defraud, Ryan defrauded the State of money, property, and the right to his honest services. The schemes underlying these offenses were predicated on

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Ryan receiving personal and financial benefits in return for official acts while serving as Secretary of State and Governor, interfering with the investigations into official misconduct, diverting State personnel to campaign use, concealing the diversion of State resources, obstructing the grand jury investigation into his alleged misconduct, and failing to disclose payments received for official acts on income tax returns. He also caused to be delivered by mail checks to various entities relating to the scheme to defraud. But for his status as Secretary of State and Governor, Ryan would not have been in a position to engage in the wrongdoing underlying the offenses of conspiracy to commit racketeering and mail fraud. Additionally, Ryan's making of false statements to the Federal agents conducting the grand jury investigation was an attempt to obstruct the investigation, at least in part, to avoid the consequences of his wrongdoing as a State officer.

Ryan's extensive and reprehensible criminal conduct was directly and inherently related to his official duties as Secretary of State and Governor. Moreover, the criminal conduct in which Ryan engaged for over a decade is precisely the type of misconduct and breach of public trust that section 2-156 is designed to discourage. *See Bauer v. State Employees' Retirement System of Illinois*, No. 1-03-1589, slip op. at 14-26 (Ill. App. 1st Dist., June 30, 2006).

Consequently, Ryan's felony convictions clearly require the forfeiture of pension benefits under the System pursuant to section 2-156 of the Pension Code.

Amount of Benefits Forfeited

You next inquire whether, under section 2-156, Ryan has forfeited all of his pension benefits or only those accrued while he served as Secretary of State and Governor, given

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that the conduct underlying Ryan's convictions relates specifically to those offices. Before addressing your question, it is necessary to review Ryan's political career and his participation in public pension funds.

Background

Ryan served several years in local government, including with the Kankakee County Board. He was then elected to the Illinois House of Representatives, where he served from 1973 to 1983. His tenure in the Illinois House of Representatives included two terms as Minority Leader (1977-81) and a term as Speaker of the House (1981-83). Ryan then was elected to two terms as Lieutenant Governor (1983-91) and two terms as Secretary of State (1991-99). On November 3, 1998, he was elected to a four-year term as Governor (1999-2003).⁴

Based on information obtained from the System, it is my understanding that during his tenure with Kankakee County, Ryan made contributions to the IMRF. After Ryan was elected to the General Assembly, he began making contributions to the General Assembly Retirement Fund (the Fund) (40 ILCS 5/2-126 (West 2004)). Throughout his terms as a General Assembly member and as a constitutional officer, Ryan continued to make contributions into the Fund (40 ILCS 5/2-105 (West 2004)). While a member of the General Assembly, Ryan also transferred his credits and creditable service accumulated under the IMRF into the Fund (40 ILCS 5/7-139.1 (West 2004)). In connection with this transfer, he made a salary disparity contribution to the Fund.

⁴See Illinois Blue Book 21 (2001-2002); Illinois Blue Book 27 (1991-1992); Illinois Blue Book 27 (1997-1998); Illinois Blue Book 155 (1981-1982); Indictment at 2.

Ryan's criminal convictions are based on his conduct while serving as Secretary of State and Governor. The Indictment contains no allegations of any wrongdoing during the time that he served as Lieutenant Governor, a member of the General Assembly, or a local official. However, because Ryan contributed to the Fund while he served in all of the State offices he held and transferred his credits from his county service into the Fund, you inquire whether he has forfeited all of his pension benefits, or only those benefits accrued while he served as Secretary of State and Governor.

Analysis

State Credits

As quoted above, section 2-156 provides that "[n]one 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." The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Wauconda Fire Protection District v. Stonewall Orchards, LLP*, 214 Ill. 2d 417, 430 (2005). The statutory language is the best indicator of legislative intent, and that language must be given its plain and ordinary meaning. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 26 (2005). If the statutory text is clear and unambiguous, it should be given effect as written, without reading into it exceptions, limitations, or conditions that the General Assembly did not express. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 426 (2002). Pension statutes are to be liberally construed in favor of the rights of the pensioner. *Mattis v. State Universities*

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Retirement System, 212 Ill. 2d 58, 76 (2004); *Shields v. Judges' Retirement System of Illinois*, 204 Ill. 2d 488, 494 (2003).

Section 2-156 expressly provides that "[n]one of the benefits herein provided for shall be paid" if the Fund participant commits "any felony relating to or arising out of or in connection with his or her service as a member."⁵ (Emphasis added.) By using the phrase "[n]one of the benefits" in conjunction with the phrase "any felony relating to or arising out of or in connection with his or her service as a member[,]" the plain language of section 2-156 mandates the forfeiture of all pension benefits provided for by the System where a nexus exists between the felony conviction and the participant's official duties, regardless of whether the participant held distinct offices or positions with the State. Accordingly, the trigger for forfeiture under section 2-156 is the existence of a connection between the felony conviction and the participant's service to the State while a member. Had the General Assembly intended to limit the application of the statute to particular offices or positions held by a participant within the State, it could have written such a limitation into section 2-156. It did not. Rather, the plain language of the statute indicates that no benefits provided by the System are to be paid where a nexus exists between the felony conviction and the participant's official duties, regardless of the positions or offices held with the State. To construe section 2-156 otherwise would read into it an exception that the General Assembly did not include.

⁵As used in article 2 of the Code (40 ILCS 5/2-101 *et seq.* (West 2004)), the term "member" includes "[m]embers of the General Assembly * * * and any person serving as Governor, Lieutenant Governor, Secretary of State, Treasurer, Comptroller, or Attorney General for the period of service in such office." 40 ILCS 5/2-105 (West 2004).

This construction of section 2-156 is in accord with case law interpreting similar forfeiture provisions in the Pension Code. *See Taddeo v. Board of Trustees of the Illinois Municipal Retirement Fund*, 216 Ill. 2d 590 (2005); *Wells v. Board of Trustees of the Illinois Municipal Retirement Fund*, 361 Ill. App. 3d 716 (2005), *appeal denied*, 217 Ill. 2d 627 (2006); *Grever v. Board of Trustees of the Illinois Municipal Retirement Fund*, 353 Ill. App. 3d 263 (2004), *appeal denied*, 217 Ill. 2d 561 (2005). These cases provide valuable guidance in interpreting section 2-156.

In *Taddeo*, the Supreme Court addressed whether, pursuant to section 7-219 of the Pension Code (40 ILCS 5/7-219 (West 1998)),⁶ a participant in the IMRF who earned concurrent service credits due to simultaneous employment with two separate, participating municipalities forfeited his right to all of his IMRF pension benefits when he was convicted of a felony that related to or arose out of or in connection with his service to only one participating municipality. After reviewing section 7-219, the Supreme Court held that the participant's felony conviction arising out of his service as mayor was not related in any way to his concurrent service as township supervisor. Thus, the Court found that the participant was entitled to the pension he earned for his service as township supervisor. In reaching this conclusion, the Court stated:

it is clear that Taddeo is entitled to the IMRF pension he earned for his service as township supervisor. * * * [P]ension benefits are forfeited only if there is a clear and specific connection between the felony committed and the participant's employment. Here, as Taddeo concedes, there is such a nexus between his felony

⁶Section 7-219 sets out the felony forfeiture provisions for those local government officers and employees participating in the IMRF, including county employees and board members, and provides that "[n]one of the benefits provided for in this Article 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." 40 ILCS 5/7-219 (West 1998).

convictions and his position as mayor of Melrose Park. Accordingly, he must forfeit the pension he would have received as an employee of that participating municipality. However, it is undisputed that Taddeo's felony convictions were not related in any way to his employment as township supervisor for Proviso Township. Without such a nexus, there is no basis for disqualifying Taddeo from receiving his township supervisor's pension. See *Cirignani v. Municipal Employees', Officers', & Officials' Annuity & Benefit Fund*, 317 Ill. App. 3d 732 (2000) (widow permitted to receive her deceased husband's pension although she had been disqualified from receiving her own pension because she was a convicted "ghost payroller").

The interpretation of section 7-219 which the Board proposes fails to take into consideration the particular facts of this case. *Nothing in the plain language of the statute, which the Board purports to rely on, suggests that the forfeiture requirement was intended to encompass the situation where, as here, the participant's entitlement to an IMRF pension is based on his employment with two separate participating municipalities.* The statute simply does not speak to this particular situation. We find, therefore, that the Board's reliance on the plain language of the statute is misplaced. (Emphasis added.) *Taddeo*, 216 Ill. 2d at 597-98.

Similarly, in *Grever*, an IMRF participant who earned service credits as an employee of a township, county, and county forest preserve district appealed the termination of all of his pension benefits based on a felony conviction related only to his township service. The appellate court held that pension benefits earned in the service of a municipal employer different from the one to which plaintiff's felony conviction related were not forfeited under section 7-219. Specifically, the court explained:

The purpose of the forfeiture provision is to "discourage official malfeasance by causing a forfeiture of benefits to which a public official otherwise would be entitled." *Cirignani v. Municipal Employees', Officers', & Officials' Annuity & Benefit Fund*, 317 Ill. App. 3d 732, 736 (2000). "The rationale is to deter public officials

from committing a breach of the public trust so that the public officials * * * *do not profit from their wrongdoing.*" (Emphasis added.) *Cirignani*, 317 Ill. App. 3d at 736. Plaintiff has not been found guilty of any wrongdoing in connection with his employment with the County and the District. Accordingly, forfeiture of pension benefits earned from that employment would not serve the purpose of the forfeiture provision and would defeat the salutary objectives of Article 7 of the Code. Moreover, our review reveals nothing to indicate that the General Assembly specifically contemplated this situation, where an individual earns benefits from several municipal employers but commits malfeasance only in connection with one, and we believe that a literal application of the statute to strip an employee of benefits fairly earned and untainted by malfeasance would amount to a substantial injustice. Thus, although the statute does not explicitly limit the scope of the forfeiture to benefits from service to any particular municipal employer, such a limitation is reasonably implicit. That which is implied in a statute is as much a part of it as that which is expressed. *Baker v. Miller*, 159 Ill. 2d 249, 260 (1994). Additionally, the language of pension statutes must be liberally construed in favor of the rights of the pensioner. *Shields v. Judges' Retirement System of Illinois*, 204 Ill. 2d 488, 494 (2003). Accordingly, based on our adoption of the holding in *Taddeo* and also our independent review of the statute, we conclude that a conviction of a felony in connection with service to a particular municipal employer results in the forfeiture of benefits earned only from that particular employment relationship. (Italics in original.) (Underscore added.) *Grever*, 353 Ill. App. 3d at 267.

Under the reasoning of *Taddeo* and *Grever*, pension benefits earned in the service of a governmental entity different from the one to which the officer's felony convictions relate are not forfeited. These cases, however, do not address the situation where a public employee or officer has earned pension benefits through service to one governmental entity, but in different positions with that entity, and the felony conviction relates only to one or more of several positions held.

In *Wells*, the appellate court addressed that situation. Specifically, a municipal retiree sought review of the IMRF Board's decision to terminate his pension benefits after he was convicted of committing forgery while employed as a village administrator. Prior to serving as the village administrator, plaintiff worked as a laborer for the village, the foreman of the village's water and sewer department, and the director of the village's public works department. On appeal, plaintiff argued that he should forfeit only the portion of his pension that related to his employment as the village administrator because only those benefits accrued while he held the position to which his conviction related.

Relying on section 7-219, the court stated that the use of the phrase "service as an employee" did not limit the application of the statute to particular positions held within the scope of one's services. Moreover, the court noted that if the General Assembly had intended to limit application of section 7-219 to particular positions, it could have done so in the manner advocated by plaintiff. The court stated:

the rule advocated by plaintiff would be a difficult one to apply. When two distinct employers are involved, as in *Taddeo* and *Grever*, the boundary line limiting the reach of section 7-219 is clear. A felony related to employment with one employer, barring some additional nexus, is clearly not related to employment with the other. Conversely, when only one employer is present, numerous questions arise. For example, in this case, we could ask whether plaintiff's position as director of the public works department led to his holding the position of village administrator. If so, is not then plaintiff's holding the earlier position causally related to the occurrence of the felonies, at least in the but-for sense of causation, because it made possible plaintiff's employment as village administrator? Plaintiff does not attempt to address such a question, and we point it out merely to demonstrate the unworkability of plaintiff's proposed rule. Moreover, unlike the rule in *Grever* and *Taddeo*, plaintiff's proposition could severely

retard the deterrent effect of section 7-219. An employee who changes positions on a fairly regular basis would effectively immunize from the statute much of his or her pension. As noted above, the statute exists to deter public officials from committing breaches of the public trust and benefitting from their wrongdoing. *Cirignani*, 317 Ill. App. 3d at 736. We do not believe that the legislature would have intended that the deterrent be so paltry in such situations. *Accordingly, we hold that section 7-219 applies to whatever benefits are generated by service to a single employer regardless of the particular positions held by the employee during that employment.* (Emphasis added.) *Wells*, 361 Ill. App. 3d at 722-23.⁷

Based on *Wells*, it is my opinion that section 2-156 mandates the forfeiture of all of a public official's pension benefits generated by service to a single governmental entity where a nexus exists between the felony conviction and any of the public official's duties to that entity, regardless of the position held. As *Wells* explains, to conclude otherwise would result in an unworkable rule that would ultimately abrogate the deterrent effect of section 2-156. This reading of the Pension Code comports with the language of section 2-156 and its intended purposes.

As previously noted, Ryan served as Governor, Secretary of State, Lieutenant Governor, and as a member of the General Assembly. Ryan's service as a constitutional officer and General Assembly member all were for a single governmental entity, the State of Illinois, and his service credits for each of the four State offices were all earned in the System. Consequently, regardless of the particular positions that he held in State government, Ryan's

⁷The reference to *Taddeo* in the quote above was to the appellate court's decision in *Taddeo v. Board of Trustees of the Illinois Municipal Retirement Fund*, 353 Ill. App. 3d 48 (2004), *aff'd*, 216 Ill. 2d 590 (2005).

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felony convictions were related to his service as a State official and, under the reasoning of *Wells*, he has forfeited all of his pension benefits generated by his State service, even though the conduct underlying his felony convictions only related to the offices of Secretary of State and Governor.

Because *Wells* specifically addresses the situation here, where the public official served in multiple positions for a single governmental entity, I believe it, not *Taddeo*, controls. However, *Taddeo* is distinguishable for another, separate reason. In *Taddeo*, the Court noted that the participant, in essence, earned two completely independent pensions, one for his service as township supervisor and one for his service as mayor. Section 7-203 of the Pension Code (40 ILCS 5/7-203 (West 2004)) specifically mandates that separate reserves be maintained in the IMRF for each participating employee in such detail as is necessary to administer all the benefits provided and "to segregate accurately the separate liabilities of each participating municipality and its instrumentalities, or of any participating instrumentality, with respect to each participating employee." Further, section 7-204 of the Pension Code (40 ILCS 5/7-204 (West 2004)) provides that "each participating municipality and its instrumentalities, and each participating instrumentality, shall be treated as an independent unit within the [IMRF.]" These sections provided support for the *Taddeo* court's holding that, where distinct positions are involved for different governmental entities under the IMRF, a felony conviction related to service for one governmental entity will result only in the forfeiture of benefits earned in the service of the particular entity to which the conviction relates.

In contrast to *Taddeo*, Ryan is not receiving separate pensions for each State office he held. Rather, he receives one pension for his accumulated State service. Moreover, article 2 of the Pension Code does not contain language similar to that in sections 7-203 and 7-204. Thus, the various offices or positions that qualify an individual for participation in the Fund are not treated as separate, independent units within the Fund, and liabilities for each office or position are not segregated or apportioned.

Transferred IMRF Credits

Ryan's service to Kankakee County is clearly distinct from his service to the State as a constitutional officer or a General Assembly member. A unit of local government, such as a county, is a separate and distinct public body from the State of Illinois. Ill. Const. 1970, art. VII, §3. Further, the pension benefits Ryan accrued while serving Kankakee County were credited to his IMRF account, a separate and distinct pension system under the laws of Illinois. *See* 40 ILCS 5/7-101 *et seq.* (West 2004). If Ryan had earned sufficient credits in the IMRF to allow him to receive a pension and if he had left his credits in the IMRF or retired under the Retirement Systems Reciprocal Act (40 ILCS 5/20-101 *et seq.* (West 2004)), then under *Taddeo*, he would be entitled to pension benefits for his county service. Ryan, however, is not in that situation.

He would not have been able to receive a pension solely under the IMRF because his service credits in the IMRF were insufficient to have allowed him to do so. Based on information provided by the System, Ryan earned 5 years and 11 months of creditable service in the IMRF. These service credits alone are clearly insufficient to allow Ryan to retire under the IMRF and qualify for a pension (40 ILCS 5/7-141(a) (West 2004)), because to obtain a pension

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under the IMRF, Ryan would have had to have earned 8 years of creditable service with the county. 40 ILCS 5/7-141(a)(4) (West 2004). Instead of leaving the credits earned during his county service in the IMRF, Ryan transferred those credits and his creditable service accumulated under the IMRF into the Fund. In doing this, Ryan took advantage of a statutory provision that allows participants in the System to transfer credits and creditable service accumulated under the IMRF to the System (*see* 40 ILCS 5/7-139.1 (West 2004)). Ryan's decision to transfer his IMRF credits and creditable service to the System terminated his participation in the IMRF. 40 ILCS 5/7-139.1 (West 2004) ("Participation in this Fund as to any credits transferred under this Section shall terminate on the date of transfer"). Thus, the IMRF is not responsible for any portion of Ryan's pension benefits.

All of these facts distinguish Ryan's situation from *Taddeo*. Although Ryan's transferred IMRF credits were generated by service to a separate governmental entity, he would be unable to receive a pension for his county service standing alone, because he had not accumulated sufficient county credits. Thus, Ryan's entire ability to receive pension benefits for his county service comes solely through his participation in the System. Because I have concluded that all of his pension benefits as a State official are forfeited due to his criminal wrongdoing, under section 2-156, the System cannot pay pension benefits for Ryan's county service where he qualifies for those benefits based solely on his participation in the System. Therefore, the transferred IMRF credits are also subject to forfeiture under section 2-156 of the Pension Code.

Suspension of Benefits

Your third question is whether the Board of Trustees for the Fund (the Board) may suspend Ryan's pension benefits immediately upon his sentencing or only after all of his criminal appeals have been exhausted. In *Stillo v. State Retirement Systems*, 305 Ill. App. 3d 1003 (1999), *appeal denied*, 186 Ill. 2d 590 (1999), *and cert. denied*, 529 U.S. 1069, 120 S. Ct. 1677 (2000), a former circuit court judge and his wife sought administrative review of the Board of Trustees of the Judges' Retirement System's termination of the judge's pension benefits based on his felony conviction arising out of acts committed while a judge. On appeal, plaintiffs argued, among other things, that the law prohibited the Judges' Retirement System from terminating his pension benefits until he exhausted all of his criminal appeals. The appellate court disagreed. Relying on the plain language of section 18-163 of the Pension Code (40 ILCS 5/18-163 (West 1996)),⁸ the appellate court found that a person convicted of any felony related to his service as a judge would lose his pension benefits upon conviction and sentencing. *Stillo*, 305 Ill. App. 3d at 1014. Moreover, the court found that to require that pension benefits could not be terminated until all appeals had been exhausted:

⁸Section 18-163 of the Pension Code provided: "None of the benefits herein provided 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 judge." 40 ILCS 5/18-163 (West 1996). Section 18-163 has remained unchanged since *Stillo*.

would nullify the plain language of section 18-163 and call into question the supreme court's well-reasoned decision in *Keenan*.^{9]} Such drastic action is not warranted. Therefore, we should * * * follow the clear dictates of the Pension Code. *Accordingly, under the Pension Code, the System may proceed to terminate benefits in accordance with due process once the participant has been convicted of a felony and sentenced.* (Emphasis added.) *Stillo*, 305 Ill. App. 3d at 1014.

This portion of section 2-156 is identical to section 18-163 and should be interpreted similarly. Section 2-156 operates to terminate pension benefits for participants who are convicted of felonies arising out of acts related to the performance of their official duties. As used in the Pension Code, the courts have held that a conviction of a felony occurs on the date on which a court enters judgment and imposes a sentence on the conviction. *People v. Allen*, 71 Ill. 2d 378, 381 (1978); *Stillo*, 305 Ill. App. 3d at 1013; *People ex rel. Wright v. Board of Trustees of the Teachers' Retirement System*, 157 Ill. App. 3d 573, 579 (1987). Consequently, under section 2-156, the Board may begin the process of terminating Ryan's pension benefits by suspending his benefits immediately upon the court's imposition of the sentence, or, in this instance, anytime after September 6, 2006. The Board must then provide Ryan with notice and an opportunity for a hearing on the issue of the termination of benefits. *Stillo*, 305 Ill. App. 3d at 1012, 1014.

⁹In *People ex rel. Keenan v. McGuane*, 13 Ill. 2d 520 (1958), *cert. denied*, 358 U.S. 828, 79 S. Ct. 46 (1958), the Court analyzed whether an appeal of a criminal conviction stayed a provision in the Election Code that provided that "[e]very elective office shall become vacant on the happening of * * * [h]is conviction of an infamous crime." Ill. Rev. Stat. 1957, ch. 46, par. 25-2. The Court found that the office of Cook County assessor became vacant after the then-assessor's conviction and sentencing on charges of Federal tax evasion. The assessor argued that the pendency of his appeal stayed the finality of his conviction. The Court rejected the argument, finding that, after a conviction, the presumption of innocence no longer prevails and the law thereafter presumes that the defendant is guilty. *Keenan*, 13 Ill. 2d at 536. In fact, the Court stated that it found "no merit in petitioner's contention that pendency of his appeal stays the finality of his conviction." *Keenan*, 13 Ill. 2d at 537.

Refund

You next inquire whether Ryan is entitled to receive a refund of his contributions to the System. As noted above, all of Ryan's pension benefits are subject to forfeiture. Section 2-156 specifically provides, however, that it does not operate to "preclude the right to a refund." 40 ILCS 5/2-156 (West 2004). Although section 2-156 does not expressly address the proper calculation of a refund, the Illinois Supreme Court has provided ample guidance.

In *Shields*, the Illinois Supreme Court addressed whether a former judge whose benefits were forfeited as a result of a felony conviction was entitled to a full refund of his contributions without deduction for the benefits he had received prior to the forfeiture. The Court began its analysis by examining the judicial pension forfeiture provision in section 18-163 of the Code (40 ILCS 5/18-163 (West 1992)), which is virtually identical to section 2-156. The Court noted that section 18-163 contained no limitation on the right to a refund: "In other words, the right to the refund is unconditional." *Shields*, 204 Ill. 2d at 497. The Court then held that it could not impose conditions that were not clearly required by the statutory language.

The Court also considered the various provisions concerning refunds contained in section 18-129 (40 ILCS 5/18-129 (West 1992)) of the Pension Code. This section, much like section 2-123 of the Pension Code (40 ILCS 5/2-123 (West 2004)), provides for refunds of contributions under certain conditions, including death or on ceasing to be a judge. *See* 40 ILCS 5/18-129(a) through (g) (West 2004). However, because section 18-129 does not address the situation in which benefits have been forfeited due to a felony conviction, the *Shields* court ruled

that section 18-129 did not apply to those circumstances. Accordingly, in light of the unconditional nature of the right to a refund granted by section 18-163, the Court concluded that it was not permissible to reduce that refund by the amount of pension benefits which Shields had already received:

if the Board were permitted to deduct Shield's benefits from his total contributions, it would, in effect, be recouping benefits rightfully paid to Shields prior to his conviction. That result would be incompatible with our determination that the right to a refund is unconditional. *Shields*, 204 Ill. 2d at 497.

Because the forfeiture provisions governing judicial and General Assembly members are virtually identical, the right to a refund of contributions granted by section 2-156, like the right granted by section 18-163, is unconditional.¹⁰ Accordingly, section 2-156 entitles Ryan to a full refund of his contributions to the Fund, including the amounts transferred from the IMRF into the Fund and the salary disparity contribution he made to the System with regard to the transferred IMRF credits, undiminished by any benefits he received prior to termination and without interest. *See Shields v. State Employees Retirement System of Illinois*, 363 Ill. App. 3d 999, 1001-06 (2006) (former judge was not entitled to interest on judgment awarding him a refund of contributions), *appeal denied*, 219 Ill. 2d 598 (2006); *Bassett v. Pekin Police Pension Board*, 362 Ill. App. 3d 235, 237-42 (2005).

¹⁰Just as the refund provisions of section 18-129 have no application to the forfeiture of a General Assembly pension, section 2-123 contains no reference to forfeiture of a General Assembly pension, and is therefore similarly inapplicable.

Timing of Refund

Your final question is whether the System must refund Ryan's contributions immediately upon the Board's termination of his benefits or only after the completion of all appeals arising from Ryan's convictions. Illinois courts have interpreted the phrase "convicted of any felony," as used in the Pension Code, to mean the date on which a court enters judgment and imposes a sentence on the conviction. Consequently, the Board may begin the process of terminating Ryan's benefits by suspending his pension benefits as of the date of sentencing, pending notice and a hearing on the issue of the benefits' termination. *Stillo*, 305 Ill. App. 3d at 1014. Once the Board has provided notice and held a hearing, if it decides to terminate the pension benefits, the Board should timely refund the pension contributions due. Nothing in section 2-156 indicates that payment of the refund should be held in abeyance pending the appeal of the underlying conviction. *Stillo*, 305 Ill. App. 3d at 1014.

Conclusion

As a result of over a decade of criminal conduct that was inherently related to his duties as a State official, Ryan has forfeited all of his pension benefits. Section 2-156 of the Pension Code entitles Ryan to a full refund, without interest, of contributions made to the Fund in connection with his service as a State constitutional officer and a General Assembly member, as well as those contributions transferred into the Fund from the IMRF and the salary disparity contribution he made to the System with regard to the transferred IMRF credits. The Board may suspend Ryan's pension benefits at any point after his criminal sentencing and must timely refund

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Ryan's contributions, after voting to terminate his benefits and providing him with an opportunity to appeal that decision.

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