



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 16, 2008

FILE NO: 08-002

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 your letter inquiring whether Donald N. Snyder, Jr. has forfeited his pension benefits as a result of his Federal criminal conviction for mail fraud. For the reasons stated below, it is my opinion that Donald N. Snyder, Jr.'s conviction for engaging in a scheme to defraud the people of this State requires the forfeiture of his pension benefits.

According to the records of the United States District Court for the Northern District of Illinois, on July 19, 2007, the United States filed a six-count indictment against Donald N. Snyder, Jr. (Snyder), John J. Robinson, and Larry E. Sims. *United States v. Snyder*, No. 07 CR 457 (N.D. Ill. July 19, 2007). On October 4, 2007, the United States filed a six-count superseding indictment against Snyder and Michael J. Mahoney. *Superseding Indictment, United*

Mr. Tim Blair - 2

States v. Snyder, No. 07 CR 457 (N.D. Ill. October 4, 2007). Snyder subsequently pled guilty to one count of mail fraud under the superseding indictment, and the court sentenced him to a term of imprisonment of two years.¹ The offense of mail fraud is a felony under Federal law. *See* 18 U.S.C. §3559(a).

The plea agreement, upon which the conviction was entered, states that Snyder was appointed as the Director of the Illinois Department of Corrections (IDOC) in approximately January 1999 and served in that position until approximately February 2003.² As IDOC Director, Snyder "had control over all divisions of the IDOC, was responsible for all facets of the operations of the IDOC, and had approval authority over the award of millions of dollars in contracts to vendors, including health care providers, who provided services in IDOC institutions." Plea Agreement at 3, *United States v. Snyder*, No. 07 CR 457-1 (N.D. Ill. December 14, 2007); *see also* Superseding Indictment at 1.

Under the plea agreement, Snyder pled guilty to engaging in a scheme to defraud the people of the State of Illinois of money, property, and the intangible right to his honest services by means of false and fraudulent pretenses, representations, promises, and material omissions, while serving as Director of IDOC. Plea Agreement at 2. Specifically, from early

¹The court also ordered that, after serving his prison sentence, Snyder must serve a term of thirty-six months of supervised release and perform three hundred hours of community service. Additionally, in connection with his sentencing, the court entered a preliminary order of forfeiture requiring that Snyder pay a \$50,000 money judgment. *United States v. Snyder*, No. 07 CR 457 (N.D. Ill. July 30, 2008).

²Based on information the State Employees' Retirement System (SERS) provided, Snyder became a member of SERS in January 1987, when he became a Corrections Detention Consultant for the IDOC. Snyder had uninterrupted qualifying service with SERS until the termination of his employment with IDOC in April 2003.

Mr. Tim Blair - 3

2000 until approximately the end of 2002, Snyder worked with his co-defendants, who were lobbyists or consultants (collectively referred to herein as lobbyists) for IDOC vendors, to perpetrate a scheme to use his position to benefit his co-schemers and their clients by assuring them continued business with IDOC in exchange for cash kickbacks. Plea Agreement at 5-7; *see also* Superseding Indictment at 6-9. As IDOC Director, Snyder awarded millions of dollars in contracts to provide health care services at Illinois prisons to two vendors. Superseding Indictment at 3. Portions of those contracts were paid in the form of commissions to J. Patrick Noll, an Illinois company formed to develop and promote correctional business in Illinois for particular vendors and controlled by one of Snyder's co-schemers. Plea Agreement at 2; Superseding Indictment at 2. Once these lobbyists received their commissions through J. Patrick Noll, they would then pay a cash kickback to Snyder. Plea Agreement at 5-7. Snyder received approximately \$50,000 over the duration of this scheme. Plea Agreement at 14.

In consideration for the cash kickbacks from the lobbyists, Snyder gave the lobbyists information and assistance with IDOC contracts and other matters so as to benefit their clients' continued business with IDOC. Plea Agreement at 5-7. To further this scheme, on or about July 25, 2002, Snyder caused to be delivered by mail a letter from one of the vendors that contained a payment in the amount of \$4,500 to J. Patrick Noll. Plea Agreement at 2; *see also* Superseding Indictment at 9. The mailing of this payment resulted in a violation of Federal law. The superseding indictment and the plea agreement also describe Snyder's attempt to conceal the cash kickbacks he received by filing a false statement of economic interest under the Illinois Governmental Ethics Act (5 ILCS 420/4A-101 *et seq.* (West 2002)).

ANALYSIS

Section 14-149 of the Illinois Pension Code (the Pension Code) (40 ILCS 5/14-149 (West 2006)) provides, with respect to members of the State Employees' Retirement System:

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.)

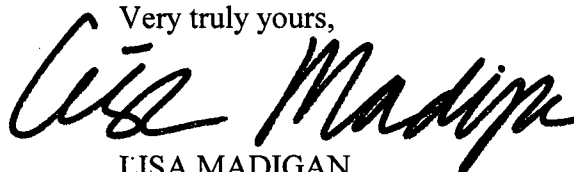
The public unquestionably has the right to conscientious service from those in governmental positions. The purpose of the felony forfeiture provisions in the Pension Code is to implement that right and discourage official malfeasance by denying retirement benefits to public servants convicted of violating the public's trust. *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).

Mr. Tim Blair - 5

Snyder's conviction clearly related to, arose out of, and was in connection with his service as Director of IDOC. In this position, Snyder had approval authority over all IDOC contracts. Snyder flagrantly misused his official position and authority to the detriment of the State by participating in a scheme to favor the business interests of certain IDOC vendors, in exchange for cash kickbacks. Were it not for his status as IDOC Director, Snyder would not have been in a position to provide favorable treatment to his co-schemers and to line his own pockets with kickback money. This is precisely the type of egregious misconduct and breach of the public trust that section 14-149 of the Pension Code was intended to discourage.

Therefore, based on the records of the United States District Court for the Northern District of Illinois, it is my opinion that Donald N. Snyder, Jr.'s felony conviction requires that he forfeit all of his retirement benefits under the State Employees' Retirement System, which includes those benefits he accrued as an IDOC employee, as well as those resulting from his service as IDOC Director. *Wells v. Board of Trustees of the Illinois Municipal Retirement Fund*, 361 Ill. App. 3d 716 (2005), *appeal denied*, 217 Ill. 2d 627 (2006); Ill. Att'y Gen. Op. No. 06-002, issued September 12, 2006. Under the Pension Code, 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