Teachers' Retirement System of the State of Illinois
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Retirement Security for Illinois Educators

August 23, 2007

Scott Reeder, State Capitol Bureau Chief
Small Newspaper Group
State Capitol Pressroom
Springfield, IL 62706

Dear Scott,

I'm enclosing the four public decisions that led to the revocations of pensions by the Teachers' Retirement System of the State of Illinois. Please note that one case was ultimately settled by the Fifth District Appellate Court of Illinois. The court decision is enclosed.

Please let me know if you have questions regarding these cases or if I can be of any further assistance to you.

Sincerely,

Eva Goltermann
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Teachers' Retirement System of the State of Illinois
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BEFORE THE BOARD OF TRUSTEES
TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

In the Matter of:	)	
	)	**No. 358-12-2554**
Raymond J. Gornik,	)	
	)	
Petitioner.	)	

PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING COMMITTEE IN THE ADMINISTRATIVE REVIEW OF RAYMOND J. GORNIK

I. Introduction

Pursuant to 80 Ill. Admin. Code § 1650.640(e), Petitioner Raymond Gornik agreed with System staff that Mr. Gornik's request for administrative review would be presented to the TRS Board of Trustees' Claims Hearing Committee solely upon the record agreed to by the parties. The Claims Hearing Committee met January 30, 2001, to consider Mr. Gornik's appeal. Present were Presiding Hearing Officer Ralph Loewenstein, Committee Chairman James Bruner and Committee members John Glennon and Sharon Leggett.

It is Mr. Gornik's contention that the pardon he received from Governor James Edgar on March 2, 1998, restored his TRS pension benefits which had previously been forfeited under the provisions of 40 ILCS 5/16-199 due to Mr. Gornik's felony conviction on forty eight (48) counts of official misconduct committed while serving as Regional Superintendent for Will County (Will County Case No. 90-CF-1071). In the alternative, Mr. Gornik argues that he should be restored to a TRS pension excluding his service credit and annual salaries earned as Will County Superintendent of Schools and based solely upon his pre-Will County teaching service.

After reviewing the briefs of the parties, and accompanying exhibits submitted in support thereof and the stipulations of the parties, the Claims Hearing Committee finds in favor of the staff and recommends that Mr. Gornik's claim be

denied by the TRS Board of Trustees. The basis for the Committee's decision is as follows.

II. Findings of Fact

Prior to hearing, the parties stipulated to the following facts which the Claims Hearing Committee adopts as the factual findings of this case. They are as follows:

1) Raymond J. Gornik initially retired from teaching on June 2, 1984, and began receiving an age retirement annuity from the Illinois Teachers' Retirement System (TRS) in the amount of $1,835.56 per month.

2) Mr. Gornik returned to TRS membership on November 16, 1987, under the provisions of Ill. Rev. Stat. 108 ½ §16-150 (now 40 ILCS 5/16-150).

3) Mr. Gornik was serving as Will County Regional Superintendent of Schools when he returned to TRS membership on November 16, 1987.

4) On January 31, 1991, Raymond Gornik was convicted in Will County Case No. 90 CF-1071 of 48 counts of official misconduct arising from and relating to his service as Regional Superintendent.

5) Under the Illinois Criminal Code, official misconduct is a Class 3 felony and was so at the time of Mr. Gornik's conviction.

6) By letter dated March 6, 1991, the Illinois Teachers' Retirement System notified Mr. Gornik that his membership in the System had been terminated under the provisions of Ill. Rev. Stat. 108 ½ §16-199, (now 40 ILCS 5/16-199).

7) In the System's letter of March 6, 1991, Mr. Gornik was notified of his right to appeal the System's determination to the TRS Board of Trustees.

8) Mr. Gornik did not challenge the System's March 6, 1991, termination of his TRS membership and the right to receive TRS benefits.

9) Mr. Gornik was an active TRS member when his membership was terminated under the provisions of Ill. Rev. Stat. 108 ½ §16-199, (now 40 ILCS 5/16-199).

10) On March 2, 1998, Mr. Gornik received a general pardon from Governor James Edgar in Case No. 90-CF-107 stating: "Raymond Gornik is hereby acquitted and discharged of and from all further imprisonment and restored to all the rights of citizenship which may have been forfeited by the conviction."

11) By letter received at the System on June 8, 1998, Mr. Gornik requested a restoration of his TRS pension benefits.

12) By letter dated July 23, 1998, the Teachers' Retirement System denied Mr. Gornik's request for restoration of his TRS pension benefits.

13) By letter dated February 11, 1999, Mr. Gornik requested an administrative review to challenge the System's July 23, 1998, decision.

14) If Mr. Gornik took a refund from the System under the provision of 40 ILCS 5/16-151, he would receive $10,499.98.

15) Mr. Gornik has not filed a retirement application with the System since his benefits were terminated on March 6, 1991.

16) If it was determined that by reason of his pardon, Mr. Gornik was restored to TRS membership retroactively to the date TRS terminated his membership under the provisions of Ill. Rev. Stat. 108 ½ §16-199, he would be eligible to retire retroactively to April 12, 1991.

17) Mr. Gornik's retroactive benefits for the period April 12, 1991 to June 30, 1999, would be $295,281.83.

18) If it was determined that by reason of his pardon, Mr. Gornik was restored to TRS membership to the date of his pardon, he would be eligible to retire retroactively to March 2, 1998.

19) Mr. Gornik's retroactive benefits for the period March 2, 1998 to June 30, 1999, would be $42,941.09.

20) If it was determined in this proceeding that Mr. Gornik's TRS membership was retroactively reinstated to April 12, 1991, his monthly annuity on July 1, 1999, would be $3,377.08.

21) If it was determined in this proceeding that Mr. Gornik's TRS membership was retroactively reinstated to March 2, 1998, his monthly annuity on July 1, 1999, would be $2,689.24.

III. Issues to be Decided

The Claims Hearing Committee is faced with the following issues in deciding this case.

1) Did the pardon granted by Governor Edgar to Mr. Gornik restore his TRS pension benefits retroactively to the date such benefits were previously forfeited under the provisions of 40 ILCS 5/16-199, or in the alternative, to his date of pardon?

2) Is membership in a public pension system a right of citizenship?

3) Is Mr. Gornik's TRS pension severable under the provision of 40 ILCS 5/16-199 and 16-150?

4) Do the felony forfeiture provisions of 40 ILCS 5/16-199 apply to Mr. Gornik?

5) Does the felony forfeiture provision set forth in 40 ILCS 5/16-199 constitute an injustice to Mr. Gornik?

IV. Discussion and Analysis

1) Introductory Remarks

Prior to denying Mr. Gornik's benefits reinstatement request, System staff referred Mr. Gornik's request to the Office of Attorney General James Ryan for an Attorney General Opinion. Attorney General Ryan issued his opinion on August 5, 1998. Therein, Attorney General Ryan concluded that Mr. Gornik's pardon in no way entitled him to a restoration of TRS benefits. The Committee finds Attorney General Ryan's analysis persuasive and adopts his opinion as part of the basis for its proposed decision in this matter. The opinion is hereby incorporated by the Committee as an exhibit to this decision.

Furthermore, before the Committee explains its decision, it would like to take this opportunity to specifically note that the felony forfeiture provision found at 40 ILCS 5/16-199 is not a criminal punishment provision. Rather, §16-199 is a contractual provision designed to deter official misconduct. As stated in Kerner v. State Employees Retirement System, 21 Ill.Dec. 879 (1978):

> **"The language of the [Illinois Pension] Code is clear and there is no need for this court to construe it so as to give it any meaning other than the one which is clearly stated. It is the duty of the court to enforce the law as enacted according to its plain and unmistakable provisions." (*Peterson v. Board of Trustees* (1973), 54 Ill.2d 260, 264, 296, N.E.2d 721, 724.) This literal interpretation accords with the obvious purpose of the statute, to discourage official malfeasance by denying the public servant convicted of unfaithfulness to his trust the retirement benefits he otherwise would be entitled. This construction accords, too, with the related purpose of implementing the public's right to conscientious service from those in governmental positions. (Kerner at p. 882).**

With the foregoing in mind, the Committee will address the individual issues raised in Mr. Gornik's appeal.

2) Effect of Pardon

Mr. Gornik argues that the pardon he received from Governor Edgar served to restore his right to TRS pension benefits based on the holdings in People ex rel. Stine v. City of Chicago, 22 Ill. App. 100 (1921), Bjerkan v. United States, 529 F.2d 125 (7th Cir. 1975) and Knote v. United States, 95 U.S. 149 (1877). The System cites the more recent cases of Talarico v. Dunlap, 226 Ill.Dec. 222 (1997) and People v. Glisson, 14 Ill.Dec. 473 (1978), as well as a host of earlier Illinois cases which conflict with the Stine case, in support of its position that Mr. Gornik's pardon does not wipe clean his felony convictions on 48 counts of official misconduct and that the pardon does not negate the effects of 40 ILCS 5/16-199. The Committee agrees with the System's analysis of the governing case law and its conclusion that the pardon did not act to restore Mr. Gornik's TRS pension based upon the following.

Stine is a 1921 Illinois Supreme Court case dealing with the effect of a gubernatorial pardon on a convicted police officer's eligibility to receive a City of Chicago police pension. In Stine, the Supreme Court determined that the pardon, which restored Stine to all his rights of citizenship which may have been forfeited by his conviction, restored all his civil rights, including his right to his police pension. However, the Stine decision contains absolutely no explanation why the Court concluded the right to a police pension is a civil right. The Committee does not find the Stine case to be well reasoned or persuasive. Furthermore, the Committee finds the Stine Court's conclusion that a pardon blots out a felony conviction to not be an accurate statement of the law in effect today in Illinois today.

The Knote and Bjerkan cases are not on point. They merely stand for the proposition that a pardon restores a person's civil rights. They do not address the issue of what constitutes a civil right.

The Committee finds the Talarico and Glisson cases to be the governing law regarding Mr. Gornik's situation. As stated by the Illinois Supreme Court in 1997 in Talarico:

> **Some courts have held that a pardon not only relieves punishment for the offender but also blots out the existence of the guilt of the offender. 67A C.J.S. Pardon and Parole §18 (1978). This court, however, has held**

that a pardon merely releases an inmate from custody and supervision. People ex rel. Abner v. Kinney, 30 Ill. 2d 201, 205 (1964). Since the very essence of a pardon is forgiveness or remission of penalty, assessed on the basis of the conviction of the offender, a pardon implies guilt; it does not obliterate the fact of the commission of the crime and the conviction thereof. 67A C.J.S. Pardon and Parole §18 (1978). In other words, a pardon 'involves forgiveness not forgetfulness.' 29 Ill. L. & Prac. Pardons §1, at 109 (1957); see also People v. Chiappa, 53 Ill. App. 3d 639, 640 (1977). The law in Illinois, though slight, supports a conclusion that Talarico's pardon did not negate the fact of his criminal conviction for purposes of collateral estoppel. (Talrico at p. 190, 177 Ill. 2d 185).

The court had earlier stated in Glisson:

"It is recognized that the effects of a pardon are not unlimited. (See People v. Rongetti, 395 Ill. 580, 584.) Illustrating this, the legislation has explicitly provided in certain areas for rights and benefits to the pardonee beyond those afforded by the granting of the pardon. For example, it has restored the right to hold public office to certain pardoned persons) Ill. Rev. State. 1975, ch 46, par. 29-15), and has made it possible for persons pardoned on the ground of innocence of the crime involved to have claims considered by the Court of Claims (Ill. Rev. Stat. 1975, ch. 37, par. 439.8(c)). Further illustrating the recognition of the limitations of a pardon on the rights of pardoned persons, the Executive Clemency Rules Book issued by the Illinois Parole and Pardon Board states: 'The granting of a pardon does not expunge the record. It merely provides official forgiveness, which only in recent years is noted on fingerprint transcripts.' State of Illinois Department of Corrections, Parole and Pardon Board, Executive Clemency 2 (1973). (Glisson at p. 506, 69 Ill. 2d 502).

Clearly, under current Illinois law, Mr. Gornik's felony convictions still stands. Since his felony conviction was not blotted out by Governor

Edgar's grant of pardon, the provisions of §16-199 remain in effect with regard to Mr. Gornik. This analysis is supported in other Illinois cases. As the Attorney General noted:

> **A general pardon does not restore to the recipient the right to practice law (People ex rel. Deneen v. Gilmore (1905), 214 Ill. 569; People ex rel. Johnson v. George (1900), 186 Ill. 122) or medicine (People v. Rongetti (1947), 395 Ill. 580). It does not render moot an appeal of the conviction which is the subject of the pardon because the pardon does not absolve the guilt of the accused. (People v. Chiappa (1977), Ill. App. 3d 639). Such a pardon does restore the right to run for public office (People ex rel. Symonds v. Gualano (1970), 124 Ill. App. 2d 208) but does not entitle the recipient to the expungement of criminal records. (People v. Glisson (1978), 69 Ill. 2d 502.)**

The Committee notes that prior to and after the Stine case was decided, it was never followed by the Illinois Courts. This being the case, the Committee unequivocally rejects Gornik's "blot out the conviction" argument.

3) Pension Right of Citizenship

The Committee further finds the Stine Court erred when it held that the right to a public pension is a civil right. The right to TRS benefits flows from a person's membership in the Teachers' Retirement System and compliance with the provisions of Article 16 of the Illinois Pension Code. Being a citizen of Illinois is not the test to receive a TRS benefit. In fact, non-Illinois citizens participate in TRS. The Stine Court's statement that pension rights are civil rights without any supporting analysis is not viewed as an accurate statement of the law of Illinois today nor considered precedential by the Committee.

As pointed out in the System's Position Statement, the rights of Illinois citizens are found in Article I of the Illinois Constitution. There is no mention therein to the right to a TRS pension. The Committee finds that TRS benefits are not a right of citizenship as clearly demonstrated

in the Illinois Constitution. The pension rights of Illinois public workers are found in §5 of Article 13 of the Illinois Constitution. As stated therein, "membership in any pension or retirement system of the State...shall be an enforceable contractual relationship." TRS benefits and the right to those benefits are a contractual relationship between a member and the System governed by the provisions of 40 ILCS 5/16-101, et seq. Governor Edgar's pardon did nothing to restore Mr. Gornik's TRS pension rights.

Additional support for the Committee's decision regarding this issue is found in the Unified Code of Corrections, 730 ILCS 5/5-5-5 which sets forth the rights forfeited by reason of a conviction and, therefore, restored by a pardon. As stated therein:

> **Loss and Restoration of Rights. (a) Conviction and disposition shall not entail the loss by the defendant of any civil rights, except under this Section and Sections 29-6 and 29-10 of The Election Code, as now or hereafter amended.**
> **(b) A person convicted of a felony shall be ineligible to hold an office created by the Constitution of this State until the completion of his sentence.**
> **(c) A person sentenced to imprisonment shall lose his right to vote until release from imprisonment.**
> **(d) On completion of sentence of imprisonment or upon discharge from probation, conditional discharge or periodic imprisonment, or at any time thereafter, all license rights and privileges grant under the authority of this State which have been revoked or suspended because of conviction of an offense shall be restored unless the authority having jurisdiction of such license rights finds after investigation and hearing that restoration is not in the public interest. This paragraph (b) shall not apply to the suspension or revocation of a license to operate a motor vehicle under the Illinois Vehicle Code.**

Clearly, the Illinois General Assembly never intended nor considered public pension membership to be a right of citizenship.

With regard to this issue, the Committee further notes that Governor Edgar made no effort in his statement of pardon to restore Mr. Gornik's pension rights.

As stated therein:

> **Now, Know Ye, that I, Jim Edgar, Governor of the State of Illinois, by virtue of the authority vested in me by the Constitution of this State, do by these presents:**
>
> **PARDON**
> **RAYMOND GORNIK**
>
> **Of the said crime of which convicted, and Raymond Gornik is hereby acquitted and discharged of and from all further imprisonment and restored to all the rights of citizenship which may have been forfeited by the conviction.**

The pardon is clear and unambiguous in its terms. Had the Governor intended to restore Mr. Gornik's pension benefits, he clearly knew how to do so. The absence of such a statement demonstrates to the Committee, the pardon was intended to restore to Mr. Gornik only the civil rights set forth in Article I of the Illinois Constitution and the Unified Code of Corrections.

4) Severable Pension Benefit

In the alternative, Mr. Gornik argues that at minimum he should receive a pension based on the time he was a teacher and only lose that portion of his pension based upon his service as a Regional Superintendent. However, under the provisions of Re-entry, 40 ILCS 5/16-150, which Mr. Gornik fails to mention:

> **If an annuitant under this System is again employed as a teacher for an aggregate period exceeding that permitted by Section 16-118, his or her retirement**

annuity shall be terminated and the annuitant shall thereupon be regarded as an active member. The annuitant's remaining accumulated contributions shall be transferred to the Members' Contribution Reserve from the Employers' Contribution Reserve.

Such annuitant is not entitled to a re-computation of his or her retirement annuity unless at least one full year of creditable service is reached after the latest reentry into service and the annuitant must have rendered at least 3 years of creditable service after last re-entry into service to qualify for a re-computation of the retirement annuity based on amendments enacted while in receipt of a retirement annuity, except when retirement was due to disability.

Mr. Gornik re-entered service under the provisions of § 16-150 when he became Regional Superintendent. Accordingly, his first retirement was terminated and cannot be reinstated. Unfortunately, for Mr. Gornik, his felony conviction terminated his further pension rights accruing though his Regional Superintendent service.

Under Article 16, Mr. Gornik cannot ignore his return to active service. Had the System tried to pay him two separate pensions, one based on his pre-Regional Superintendent service and a second on his Regional Superintendent service, Mr. Gornik would have certainly challenged the System. Mr. Gornik knew that his salary as Regional Superintendent would substantially increase his pension. He voluntarily re-entered service to take advantage of this fact. Having done so, the Committee finds Mr. Gornik must pay the consequences of his felony conviction by having his full membership terminated.

5) Application of §16-199 to Mr. Gornik

Mr. Gornik argues that §16-199 does not apply to him because of his prior July 9, 1955 service. However, §16-199 is clear and unambiguous in its language:

All teachers entering or re-entering service after July 9, 1955 shall be deemed to have consented to the provisions of this Section as a condition of membership.

Having reentered service on November 16, 1987, Mr. Gornik consented to the provisions of §16-199. Mr. Gornik cites Wright v. Board of Trustees of Teachers' Retirement System, 110 Ill.Dec. 1283 (1987) in support of his position that his pre-1955 service takes him out of the purview of §16-199. However, as pointed out previously, under 40 ILCS 5/16-150, Mr. Gornik's first retirement was terminated by his "re-entry" into active service. As stated in Wright:

> **The trial court correctly concluded that plaintiff reentered the system in 1962 pursuant to a new contract, which included the felony forfeiture provision and that, as a result of his conviction, plaintiff is not entitled to receive benefits from the system. (Wright at p. 257).**

Further support for the Committee's decision regarding this issue is found in the case of Mirabella v. Retirement Bd, 145 Ill.Dec. 68 (1990). As stated therein:

> **Petitioner overlooks the highly significant fact that he applied for and received a refund of his Park District pension contributions. For that reason the analysis of the court in People ex rel. Wright v. The Board of Trustees of the Teachers' Retirement System (1987), 157 Ill. App. 3d 573, 110 Ill. Dec. 252, 510 N.E.2d 1283, which has not been cited by either party, is directly on point. In that case, plaintiff began teaching in the Illinois public school system in 1958, at which time he automatically became a member of the Teachers' Retirement System (TRS). After the 1955-56 school year, he left Illinois to teach in Indiana, and received a refund of his contributions to TRS. He returned to Illinois in 1962, reentered the TRS and remained a member until 1982, at which time he accepted employment with the federal government. He subsequently retired and began receiving pension**

benefits from TRS in 1982, after paying an additional $6,093.97 to reestablish his withdrawn service credit for the school years 1953-54 and 1955-56 and to receive credit of the years spent in Indiana school system. His pension benefits were later terminated pursuant to Ill. Rev. Stat. 1985, ch. 108 ½, par. 16-199, a forfeiture provision comparable to the one applicable in this case.

The court agreed with TRS' argument that by applying for and accepting a refund of contributions in 1956, plaintiff terminated his membership in the Illinois plan and forfeited any pension benefits he may have acquired as of that time. Consequently, when he reentered TRS in 1962, his status was no different from that of any newly hired individual. The court also rejected plaintiff's argument that his refunding $6,000 to TRS in order to reestablish his 1953-1956 credits served to reinstate all rights, which he had previously acquired.

In this case, petitioner ceased to be employed by the Park District on September 30, 1955, and did not resume government service again until August 20, 1958. Later, exactly as in Wright, petitioner received a refund from the Park Employees' Annuity and Benefits Fund. His 1958 employment therefore did not restore any right to benefits which may have accrued to him as a result of his earlier employment, a conclusion that is not affected by his later repayment of his contribution refund. (Mirabella at p. 70 and 71).

6) Injustice to Mr. Gornik

Lastly, Mr. Gornik claims the forfeiture of his TRS pension is an injustice. However, the Illinois Court in Kerner v. State Emp. Retirement System, 21 Ill.Dec. 897 (1978), has ruled that this is not so. As stated therein:

> **We have also reviewed plaintiff's claim relating to corruption of blood and forfeiture of estate (Ill. Const. 1970, art. I, sec. 11), cruel and unusual punishment (U.S. Const., amend. VIII), and due process (Ill. Const. 1970, art. I, sec. 2; U.S. Const. Amends. V, XIV). We hold that the termination of payments here violates none of these provisions. (Kerner at p. 833).**

Again, the Committee finds that Mr. Gornik knew the consequences of a felony conviction. He chose his course of action and now must suffer the consequences of his bargain with the System to refrain from committing felonies involving teaching service.

V. Notice of Right to File Exceptions

Exceptions to the Claims Hearing Committee's Proposed Decision must be filed within fifteen (15) days of receipt by the Petitioner. A Final Decision will be issued by the Board of Trustees after it has considered the Claims Hearing Committee's Proposed Decision and any exceptions filed by the Petitioner.

BEFORE THE BOARD OF TRUSTEES
TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

In the Matter of:	)	
	)	**No. 345-38-4446**
William Cochran	)	
	)	
Petitioner.	)	

PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING COMMITTEE IN THE ADMINISTRATIVE REVIEW OF WILLIAM COCHRAN

I. Introduction

Pursuant to 80 Ill. Admin. Code 1650.640(e), Petitioner William Cochran agreed with System staff that his request for administrative review would be presented to the TRS Board of Trustees' Claims Hearing Committee solely upon the record agreed to by the parties. The Claims Hearing Committee met by telephonic conference on June 19, 2002, to consider Mr. Cochran's appeal. Present were Presiding Hearing Officer Ralph Loewenstein, Committee Chairman James Bruner and Committee members Sharon Leggett and John Glennon. Also present, was TRS Executive Director Jon Bauman, who was strictly an observer of the proceeding.

Teachers' Retirement System (TRS) member William Cochran has filed the instant administrative review to challenge the constitutionality of 40 ILCS 5/16-199, which provides as follows:

> **Felony conviction. None 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 or her service as a teacher.**

This Section shall not operate to impair any contract or vested right acquired prior to July 9, 1955 under any law or laws continued in this Article, not to preclude the right to a refund. The System may sue any such person to collect all moneys paid in excess of refundable contributions.

All teachers entering or re-entering service after July 9, 1955 shall be deemed to have consented to the provisions of this Section as a condition of membership.

Specifically, Mr. Cochran argues §16-199 violates Amendments V, VIII and XIV of the United States Constitution and Article I, Section 2, Section 11 and Section 15 of the Illinois Constitution. Mr. Cochran also argues that the case of Kerner v. State Employees Retirement System, 72 Ill. 2d 507(1978) [cert. denied 441 U.S. 923 (1979)] has been superseded by the U.S. Supreme Court's decision in United States v. Bajakajian, 524 U.S. 321(1998). By letter dated January 22, 2002, Mr. Cochran's counsel agreed that his felony conviction involved his teaching service. As stated therein, "Be advised that the undersigned on behalf of William Cochran has decided to withdraw and abandon all claims that the conduct for which Cochran was convicted was not related to Cochran's duties as a teacher."

It is the System's position that Kerner is still the law of Illinois and the United States and specifically negates all but one of Mr. Cochran's constitutional claims; the one dealing with eminent domain cases being meritless because it is irrelevant to the situation at hand. With regard to Mr. Cochran's arguments concerning Bajakajian, the System responds that §16-199 is not an excessive fine because it is not criminal punishment. Rather, §16-199 is a contractual agreement between Mr. Cochran and the System providing that a condition of the right to receive a pension from the System is that the member must refrain from committing felonies involving teaching service. Mr. Cochran violated that provision of his contract.

After considering the Position Statements of the parties and the exhibits contained in the Claims Hearing Packet, the Committee finds in favor of the System and determines that §16-199 is constitutional in all respects. The Committee concurs with staff that §16-199 does not impose a criminal fine, but finds that, even if Bajakajian's gross proportionality test applies, Mr. Cochran's felony conviction for committing Aggravated Criminal Sexual Abuse upon a minor

student under his care and supervision as a teacher warrants a forfeiture of his TRS pension benefits.

II. Facts of the Case

1) On June 15, 2001, William Cochran pleaded guilty in Perry County Case No. 2001-CF-35 to one count of Aggravated Criminal Sexual Abuse, a Class 2 Felony for fondling the breast of a female student who was a participant in Cochran's Life Saver Program serving troubled students at DuQuoin High School.

2) Mr. Cochran's student/teacher relationship with his female victim was specifically alleged in the criminal count to which he pleaded guilty.

3) Mr. Cochran's TRS benefits were suspended under the provisions of 40 ILCS 5/16-199 on June 20, 2001.

4) Mr. Cochran's TRS benefits were terminated under the provisions of 40 ILCS 5/16-199 on July 6, 2001.

5) Mr. Cochran filed his request for administrative review January 2, 2002.

III. Discussion and Analysis

1) Continued Applicability of the Kerner Case.

Otto Kerner, who served as Governor of the State of Illinois, was convicted of felonies involving his gubernatorial service. Governor Kerner raised all but one of the constitutional arguments now raised by Mr. Cochran. In upholding the State Employees Retirement System's (SERS) administrative decision to terminate Governor Kerner's SERS pension benefits, the Illinois Supreme Court found:

> **We have also reviewed plaintiff's claim relating to corruption of blood and forfeiture of estate (Ill. Const. 1970, art. I, sec. 11) cruel and unusual punishment (U.S. Const., amend. VIII) and due process (Ill. Const. Art. I Sec. 2; U.S. Const.,**

Amends. V, XIV). We hold that the termination of payments here violates none of these provisions. (Kerner at p. 833).

The U.S. Supreme Court denied certiorari in the Kerner case in 441 U.S. 923 (1979). By doing so the U.S. Supreme Court upheld the Illinois Supreme Court's decision that the felony forfeiture provisions of the Illinois Pension Code do not violate amendments V, VIII or XIV of the U.S. Constitution nor Article 1, Section 2 or Section 11 of the Illinois Constitution of 1970. The Committee finds that the Illinois Supreme Court's ruling negates Cochran's arguments (1), (2), and (3) regarding the U.S. Constitution and (1) and (3) regarding the Illinois Constitution.

Furthermore, more recently the U.S. Court of Appeals for the Tenth Circuit Court has held in Hopkins v. Oklahoma Public Employees Retirement System, 150 F. 3d 1155 (1998) that a pension forfeiture provision similar to those found in the Illinois Pension Code does not run afoul of the United States Constitution. Hopkins cites the Kerner case with approval. Hopkins demonstrates that there is no need to revisit Kerner.

Kerner was also looked upon favorably in the recent Illinois case of Shields v. Judges Retirement System, 2001 Ill. App. Lexis 826 (November 5, 2001).

As stated therein:

It is well settled in Illinois that public employee pensions are a matter of contractual right. Stillo v. State Retirement System, 305 Ill. App. 3d 1003, 1007, 714 N.E. 2d 11, 239 Ill. Dec. 453 (1999). However, the State legislature has the power to take action to deter felonious conduct in public employment by affecting the pension rights of public employees convicted of a work-related felony. Stillo, 305 Ill. App. 3d at 1007. The underlying purpose of a pension forfeiture statute is to discourage official malfeasance by causing a forfeiture of benefits to which a public official would otherwise be entitled. Kerner v. State Employees' Retirement System, 72 Ill. 2d 507, 513, 382 N.E. 2d 243, 21 Ill. Dec. 879 (1978).

Section 18-163 of the Pension Code provides, in pertinent part:

"None of the benefits herein provided shall be paid to any person who is convicted of any felony related to or arising out of or in connection with his or her service as a judge.

This Section shall not operate to impair any contract or vested right acquired before July 9, 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 9, 1955, are deemed to have consented to the provisions of this Section as a condition of participation." 40 ILCS 5/18- 163 (West 1992).

The plain language of section 18-163 (40 ILCS 5/18-163 (West 1992)) indicates that a member of the pension fund who is convicted of a felony shall thereafter receive no pension benefits, with only an entitlement to a contribution refund...

Kerner has been followed in other states as well. As stated by the Supreme Court of West Virginia in West Virginia Pub. Emp. Ret. System v. Dodd, 183 W. Va. 544 (1990):

A case from another jurisdiction which is nearly on all fours with the case now before us is Kerner v. State Employees' Retirement System, 72 Ill. 2d 507, 382 N.E. 2d 243, 21 Ill. Dec. 879 (1978), aff'g 53 Ill. App. 3d 747, 368 N.E. 2d 1118, 11 Ill. Dec. 510 (1977), cert. Denied, 441 U.S. 923, 731, 99 S. Ct. 2032, 60 L. Ed. 2d 397 (1979), 550 involving the forfeiture of the state pension rights of the late federal judge and former governor of the State of Illinois, Otto Kerner, on account of federal convictions relating to Judge Kerner's service as governor. The statute in that

case disqualified a public employee from receiving a pension if convicted of any felony relating to or arising out of or in connection with service as a public employee. The statute was in effect prior to the conduct leading to the felony convictions. The forfeiture was upheld. The intermediate appellate court of Illinois and the Supreme Court of Illinois rejected the claim that the public pension forfeiture statute was unconstitutional as an impairment of contract, as an ex post facto law, as a forfeiture of estate for a conviction, as cruel and unusual (disproportionate) punishment or as a denial of substantive due process.

The Committee notes the Kerner decision has survived for 24 years and must be overruled for Cochran to prevail. Kerner has served public policy well in Illinois, and there is no trend in the law demonstrating any reason to allow wrongdoing public employees, especially ones who criminally sexually abuse children entrusted to their care as students, to keep their public pension benefits in spite of breaking the public trust.

2) Cochran's Eminent Domain Argument

Article 1, Section 15 of the Illinois Constitution states:

Right of Eminent Domain

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

"Eminent domain" is defined as the right of the state through its regular organization, to reassert, either temporarily or permanently its dominion over any portion of the soil of the state on account of public good. In other words, eminent domain involves the condemnation of real estate for public purposes. The Committee finds there has been no taking in Mr. Cochran's situation as contemplated in Article 1, Section 15 of the Illinois Constitution.

Furthermore, Mr. Cochran is entitled to a refund of his member contributions. His contributions are not being taken. Mr. Cochran's TRS benefits on the other hand are not his property unless and until he complies with his contract with the people of Illinois. Mr. Cochran breached this contract when he was convicted of criminally sexually abusing his students, a felony involving his teaching service. Mr. Cochran's benefits are now extinguished because they failed to vest in his possession due to his breach of contract with the System.

While TRS is an agency of the State; the assets of the TRS Trust belong to no person or group. They belong to the Trust. As stated in 40 ILCS 5/16- 197:

> **Sec. 16-197. Undivided interest. All assets of the System shall be invested as one fund and no person, group of persons or entity shall have any right other than to an undivided interest in the whole, and all references to the reserves shall be construed as not requiring a segregation of assets but only the maintenance of a separate account indicating the equities in the assets as a whole.**

The Committee finds the System has taken no private property for public use. Rather, due to Mr. Cochran's contractual breach it is not paying out funds held by and in the name of Trust. The Committee finds Article 1, Section 15 of the Illinois Constitution has no relevance to Mr. Cochran's situation.

3) The Bajakajian Case

Cochran cites the U.S. Supreme Court case of United States v. Bajakajian, 524 U.S. 321 (1998) decided June 22, 1998, in support of his position that Kerner should be overruled. Bajakajian was a case involving the seizure of currency. Bajakajian was arrested transporting a substantial amount of currency out of the United States which he failed to report to federal authorities in violation of Federal currency laws. In Bajakajian, the Supreme Court focused on the fact that the defendant committed only a technical violation of the law. Had Bajakajian merely reported the amount of currency being transported out of the country, there would have been no violation. In striking down the forfeiture, the Supreme Court found a gross disproportionality between the forfeiture and the gravity of the defendant's offense.

While the Committee does not believe this to be an excessive fines case, if Bajakajian were determined to apply, the Committee finds the forfeiture herein is clearly not grossly disproportionate under the circumstances. Section 16-199 and its sister provisions found throughout the Pension Code were enacted by the General Assembly to discourage official malfeasance. Cochran, by his own admission in a court of law, agreed he criminally sexually abused a student with whom he held a student / teacher relationship. Unlike in Bajakajian where only minimal public harm was demonstrated by the government and the offense was unrelated to criminal activity and a mere reporting violation, Cochran's offense caused harm to an innocent minor student. The Illinois General Assembly has determined to constitute a Class 2 Felony, clearly a crime of serious gravity. In applying the Bajakajian gross disproportionality test, the Committee finds Cochran's §16-199 felony forfeiture to not be disproportionate , given Cochran's crime.

In People v. Jaudon, 307 Ill. App. 3d 427 (1999), the First District Appellate Court adopted the Bajakajian test. In finding the $500 fine imposed by the City of Chicago upon owners of vehicles who lend their vehicles to individuals who place unlawful weapons within such vehicles to not be a grossly disproportionate fine, the First District observed:

> **We note, particularly with respect to Coach and Jaudon, if Jaudon had an ownership interest, that the fines were even more proportionate to the level of wrongdoing since Coach and Jaudon, unlike the plaintiffs / owners in Towers and unlike the vehicle owners whose cars were driven by defendants Lee and Cates in the instant case, were not innocent. They were the drivers of the vehicles and knew of the presence of the illegal contraband. (Jaudon p. 440).**

Just like Coach and Jaudon, Cochran by his own admission was not an innocent party. Accordingly, applying the first District's Jaudon analysis, the Committee is further convinced that Cochran's forfeiture was not unconstitutional.

IV. Conclusion

Based on the foregoing, the Claims Hearing Committee finds in favor of the System in this matter. 40 ILCS 5/16-199 and Mr. Cochran's felony forfeiture are and were in fact constitutional in all respects.

V. Notice of Right to File Exceptions

Exceptions to the Claims Hearing Committee's Proposed Decision must be filed within fifteen (15) days of receipt by the Petitioner. A Final Decision will be issued by the Board of Trustees after it has considered the Claims Hearing Committee's Proposed Decision and any exceptions filed by the Petitioner.

BEFORE THE BOARD OF TRUSTEES
TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

In the Matter of:	)
Philip G. Roffman,	)
Petitioner.	)

PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING COMMITTEE IN THE ADMINISTRATIVE REVIEW OF PHILIP ROFFMAN

I. Introduction

Pursuant to 80 Ill. Admin. Code 1650.640(e), Petitioner Philip Roffman agreed with System staff that his request for administrative review would be presented to the TRS Board of Trustees' Claims Hearing Committee solely upon the record agreed to by the parties. The Claims Hearing Committee met by telephonic conference on December 18, 2006, to consider Mr. Roffman's appeal. Present were Presiding Hearing Officer Ralph Loewenstein, Committee Chairman Sharon Leggett and Committee members Jan Cleveland and James Bruner.

Petitioner Roffman filed the instant administrative review to challenge the termination of his TRS benefits under the felony forfeiture provisions of 40 ILCS 5/16-199, which provides that none of the benefits under Article 16 of the Illinois Pension Code shall be paid to any person convicted of a felony relating to or arising out of or in connection with his or her service as a teacher.

Mr. Roffman, in his capacity as principal of Warren Township High School, wrote a check for $400 from activity funds of the school district to purchase a theater ticket subscription. Mr. Roffman had authority to use school activity funds to purchase tickets to cultural events for deserving students and/or faculty members. However, Mr. Roffman did not give the tickets to deserving students or teachers, but rather, used them for personal use or did not use them at all. Mr. Roffman pled guilty to theft over $300 and less than $10,000 (720 ILCS 5/16-1) which was a Class 3 felony.

Mr. Roffman argues that his TRS benefits should not have been terminated for two reasons. His first argument is that there was no nexus between his criminal wrongdoing and the performance of his duties as a high school principal. Mr. Roffman asserts that at the time he wrote the check for the tickets in his capacity as school principal, his intention was to award the tickets to deserving students or teachers. He asserts that he was acting as private citizen, not as high school principal, when he subsequently formed the criminal intent to misappropriate the tickets for personal use. Mr. Roffman argues, therefore, that his conviction did not arise out of, was not in connection with, or related to his duties as a teacher.

Mr. Roffman's second argument is that the felony forfeiture statute should be construed liberally in his favor. He asserts that the harsh result of losing his pension is not justified because of the relatively low amount of money involved, i.e., a $400 ticket subscription.

After considering the pleadings of the parties, the stipulations, and the agreed upon exhibits contained in the Claims Hearing Packet, the Committee's recommendation is to uphold the staff's determination. As will be more fully explained, the Committee finds that the staff correctly interpreted 40 ILCS 5/16-199 and that Mr. Roffman was convicted of a felony relating to or arising out of or in connection with his service as a teacher. The Committee further finds that the felony forfeiture statute does not distinguish between crimes involving large or small sums of money, and that the Committee is without discretion to consider the harsh result of pension forfeiture as a determinative factor in enforcing the felony forfeiture statute.

II. Mr. Roffman's Nexus Claim

As stated in 40 ILCS 5/16-199:

> *Felony conviction. None of the benefits provided for in this Article shall be paid to any person who is convicted of a felony relating to or arising out of or in connection with his or her service as a teacher.*

Mr. Roffman concedes that as the principal of the school he was a "teacher" within the meaning of the statute. (See Record, page 43, Petitioner's Memorandum of Law).

In his brief, Mr. Roffman asserts that the important factor is the date on which the offense occurred. Mr. Roffman argues that he was acting as the school principal when he wrote the check for the tickets in June of 2003, but was acting as a private citizen when he formed the criminal intent in November of 2003 to appropriate the tickets for his personal use. Mr. Roffman says that because he wrote the check in June of 2003, whereas the misconduct for which he was convicted did not occur until November 2003, there was no nexus between his criminal wrongdoing and the performance of his duties as principal. (See Record, page 44, Petitioner's Memorandum of Law).

The Claims Hearing Committee finds Mr. Roffman's argument that there was no nexus between his service as school principal and the offense for which he was convicted to be unpersuasive. The Committee notes that Mr. Roffman stipulated to the following facts (See Record, page 5, Stipulation of Facts):

> *2. School activity funds of Warren Township High School District #121 are to be used for school-related events or expenses including and giving tickets to cultural events to deserving students or teachers.*
>
> *3. Mr. Roffman did not use the theater tickets that he purchased with school activity funds for school-related events or expenses, but rather, used them for personal use or did not use them at all.*
>
> *4. On December 15, 2005, a felony conviction was entered against Philip Roffman in Lake County Case No. 05 CF 4640 for theft of over $300 in that, in November 2003 he knowingly exerted unauthorized control over property of Warren Township High School District #121, his TRS employer.*

The Claims Hearing Committee finds that when Mr. Roffman decided in November of 2003 to use the tickets for personal use or not use them at all, he knew this was not an authorized use of the tickets he purchased with school funds. Mr. Roffman states in his administrative review petition (See Record, page 8, Petition for Administrative Review), the following:

> *As the theater season began in the fall of 2003 and as the date of each play in that subscription package was approaching, he either decided to use the tickets for personal use or did not use the tickets at all and thus did not give them to any student or teacher as originally planned.*

In another case involving the TRS felony forfeiture statute, *Goff v. Teachers' Retirement System of the State of Illinois,* 305 Ill. App. 3d 190 (1999), the TRS member argued that the required nexus did not exist between his crime and his service as a teacher. Mr. Goff, a school principal, was convicted of sexually abusing two minors as a scoutmaster. He argued that his conviction was not connected to his service as a teacher, because he not acting as school principal when the crimes occurred. The court rejected Mr. Goff's argument, at page 195:

> *Goff is attempting to elude the provisions of this statute by claiming that the felonies to which he pleaded guilty were not connected with, were not related to, and did not arise out of his "service" as a teacher. Goff would have this court believe that his pension can only be revoked if the felonies actually took place on school time or school grounds or during an extracurricular activity for which Goff was serving as a school chaperon. Such a construction is far too narrow. Courts often employ terms such as "incidental to" or "connected with" when defining the phrase "arising out of". Lynch Special Services v. Industrial Comm'n, 76 Ill. 2d 81, 86, 389 N.E.2d 1146, 27 Ill. Dec. 738 (1979). The statutory phrases "relating to", "arising out of", and "in connection with" are very broad terms. "An injury can be said to arise out of one's employment if its origin is in* ***some way*** *connected with the employment so that there is a casual connection between the employment and the *** injury". (Emphasis added.) Consolidated Rail Corp. v. Liberty Mutual Insurance Co., 92 Ill. App. 3d 1066, 1068-69, 416 N.E.2d 758, 48 Ill. Dec. 485 (1981). Applying these standards, we believe that the record amply supports the conclusion that the abuse in question was related to, arose out of, and was connected with Goff's service as a principal.*

In *Bauer v. State Employees' Retirement System of Illinois, et al.*, 852 N.E.2d 497 (1st Dist. 2006), the former Inspector General of the Illinois Secretary of State's Office claimed that his felony conviction for obstruction of justice did not relate to or arise out of or in connection with his service because he gave his former secretary instructions to destroy documents nine months after he left the position. In rejecting Mr. Bauer's argument and in applying the State Employees' Retirement System's similar felony forfeiture statute, the court articulated:

> *For the reasons previously discussed, we find that there was a nexus between Bauer's obstructing justice by intending to persuade Carlson*

to dispose of the documents and his employment status as Inspector General. The nexus required by the Pension Code was present because Bauer's obstruction of justice was a product of his status as Inspector General. See Devony, 199 Ill. 2d at 423. Thus, the facts satisfy the "but for" test articulated by the majority in Devoney because but for the fact that Bauer had been Inspector General, he would not have been in a position to obstruct the federal investigation of the Secretary of State's office. See Devoney, 199 Ill. 2d at 423.

The Committee is not persuaded by the argument that Mr. Roffman was acting as a private citizen when he misappropriated the tickets, or by the argument that he did not form the criminal intent to do so until November 2003, five months after he bought the tickets. Neither argument eliminates the nexus between his service as a teacher and the crime. Mr. Roffman had control over the school funds, and the authority to write the check for the tickets, because of his position as the school principal. *But for* the fact that he was the school principal, he would not have been in a position to purchase the tickets with school funds and to later misappropriate those tickets for personal use.

The Committee finds that Mr. Roffman knew the tickets were school property both in June of 2003 when he bought the tickets, and in November of 2003 when he decided to keep the tickets, regardless of whether he thought he was acting as the principal or as a private citizen, and regardless of when he formed his criminal intent. The tickets were school property because they were purchased with school funds. Mr. Roffman was convicted of theft for exerting unauthorized control over school property, which he obtained because of his position as the high school principal. The nexus between the crime and Mr. Roffman's service as a teacher is evident to the Claims Hearing Committee.

III. Mr. Roffman's Statutory Construction Claim

Next, Mr. Roffman asks the Claims Hearing Committee to consider the amount of money involved, i.e., $400, in deciding whether the forfeiture of his TRS benefits is warranted. In his brief, Mr. Roffman points out that the demarcation between a felony and a misdemeanor in the State of Illinois in 2004 was $300, and that Mr. Roffman was convicted of a felony involving $400, a difference of only $100. He asks the Claims Hearing Committee to construe the felony forfeiture statute liberally in his favor because he and his wife stand to lose hundreds of thousands of dollars in pension benefits for a crime involving a

comparatively small sum of money. (See Record, pages 47-48, Petitioner's Memorandum of Law).

In considering Mr. Roffman's request to construe the statute liberally, the Claims Hearing Committee notes that neither side in this matter cited or discussed the case of *Wells v. Board of Trustees of the Illinois Municipal Retirement Fund, et al*, 361 Ill. App. 3d 716 (2005). In applying the nearly identical felony forfeiture statute of the Illinois Municipal Retirement Fund, the court stated in *Wells* at p. 721:

> *The operation of the statute as written by the legislature is automatic. A person convicted of a felony that either arises out of or is connected to his or her employment loses his or her pension benefits. Undeniably, the statute is harsh, leaving no room for the consideration of equitable matters or the granting of lenity.*

The Claims Hearing Committee must apply the felony forfeiture statute as written. The statute does not distinguish between crimes involving large and small sums of money and the Committee cannot consider the amount of money involved in the crime. The Committee is bound to enforce the felony forfeiture law, and does not have discretion to consider the harsh result of losing one's pension. The statute clearly and unambiguously intends and compels this result.

IV. Conclusion

The Claims Hearing Committee finds in favor of the staff in this matter. Mr. Roffman has failed to establish his claim that the crime for which he was convicted of a felony was not connected to or arise out of or in relation to his service as a teacher. It is clear to the Committee that staff rightly applied 40 ILCS 5/16-199. The Committee further finds that it lacks discretion to not apply the felony forfeiture statute because the crime involved a comparatively small amount of money or because the result is harsh. The Committee recommends the Board adopt this proposed decision.

V. Notice of Right to File Exceptions

Exceptions to the Claims Hearing Committee's Proposed Decision must be filed within 15 days of receipt by the Petitioner. A Final Decision will be issued by the Board of Trustees after it has considered the Claims Hearing Committee's Proposed Decision and any exceptions filed by the Petitioner.

*305 Ill. App. 3d 190, *; 713 N.E.2d 578, **;*
*1999 Ill. App. LEXIS 386, ***; 239 Ill. Dec. 47*

RONALD A. GOFF, Plaintiff-Appellant, v. TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS and THE BOARD OF TRUSTEES, Defendants-Appellees.

NO. 5-97-0946

APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

305 Ill. App. 3d 190; 713 N.E.2d 578; 1999 Ill. App. LEXIS 386; 239 Ill. Dec. 47

June 8, 1999, Opinion Filed

PRIOR HISTORY: **[***1]** Appeal from the Circuit Court of Madison County. No. 95-MR-593. Honorable Lewis E. Mallott, Judge, presiding.

DISPOSITION: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff principal appealed an order from the Circuit Court of Madison County (Illinois) granting summary judgment for defendant retirement system in plaintiff's action challenging the revocation of his pension.

OVERVIEW: Plaintiff principal pleaded guilty to aggravated criminal sexual abuse for molesting two boys. Defendant retirement system revoked plaintiff's pension. Plaintiff sued to challenge the revocation, arguing that the crimes did not arise out of his service as a teacher, as required by 40 Ill. Comp. Stat. 5/16-199, because the abuse occurred while he was volunteering as a church camp counselor and Boy Scout leader. Both parties filed summary judgment motions. The trial court granted summary judgment for defendant. On appeal, the court affirmed, holding that the pension was properly revoked, because plaintiff's scheming, planning, and carrying out of the felonies were related to and connected with his service as a teacher. The court found that plaintiff used his service as a teacher to exert influence over the victims and their parents. Plaintiff's status as principal induced the parents to trust plaintiff to take the children to various places and to allow the children to spend the night at plaintiff's home. In addition, plaintiff used his service as a teacher to apply for and receive the volunteer positions.

OUTCOME: The court affirmed the grant of summary judgment for defendant retirement system, because plaintiff principal's scheming, planning, and carrying out of the sexual abuse were related to and connected with his service as a teacher.

CORE TERMS: teacher, felony, camp, summary judgment, pleaded guilty, connected, church, pension, revoked, convicted, trip, spend, sexual abuse, counselor, scoutmaster, carrying, scheming, educator, planning, induced, talk, legislative intent, school property, language used, plead guilty, aggravated, notified, illegal activities, decision granting, sexually abused

LexisNexis(R) Headnotes ◆ Hide Headnotes

Civil Procedure > Appeals > Standards of Review > De Novo Review

HN1 The proper standard of review for the entry of summary judgment is de novo. More Like This Headnote

Civil Procedure > Summary Judgment > Summary Judgment Standard

HN2 Summary judgment is an appropriate measure in cases where there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. More Like This Headnote

Governments > Legislation > Interpretation

HN3 The best indicator of legislative intent is the actual language used by the legislature, which must be given its plain and ordinary meaning. Additionally, courts should not depart from the plain meaning of a statute by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent. When the language of the statute is clear and unambiguous, courts must enforce the statute as written and may not resort to other aids for construction. More Like This Headnote | *Shepardize:* Restrict By Headnote

Education Law > Departments of Education > State Departments of Education > Authority

Governments > State & Territorial Governments > Employees & Officials

HN4 See 40 Ill. Comp. Stat. 5/16-199.

Governments > Legislation > Interpretation

HN5 The statutory phrases "relating to", "arising out of", and "in connection with" are very broad terms. An injury can be said to arise out of one's employment if its origin is in some way connected with the employment so that there is a casual connection between the employment and the injury. More Like This Headnote | *Shepardize:* Restrict By Headnote

Civil Procedure > Appeals > Standards of Review > Harmless & Invited Errors

HN6 While it is generally true that it is the duty of the reviewing court to reverse findings of the trial court that are against the manifest weight of the evidence, an error by itself does not warrant a reversal, and a court of review will only vacate a judgment if an error occurred which prejudiced the appellant or unduly affected the outcome. Additionally, if the trial court's decision is correct on the merits, it will not be reversed even if the trial court used an incorrect means to reach the decision, particularly if a retrial would result in the same disposition. More Like This Headnote

COUNSEL: Attorneys for Appellant: J. William Lucco, Billie L. Johnson, Lucco, Brown & Mudge for Law Offices, Edwardsville, IL.

Attorney for Appellees: Ralph H. Loewenstein, Loewenstein, Hagen, Oehlert & Smith, for P.C., Springfield, IL.

JUDGES: Honorable Gordon E. Maag, J., Honorable Clyde L. Kuehn, J., and Honorable Terrence J. Hopkins, J., Concur. JUSTICE MAAG delivered the opinion of the court.

OPINIONBY: Gordon E. Maag

OPINION: [580] [*191]** JUSTICE MAAG delivered the opinion of the court:

Plaintiff, Ronald A. Goff, began his career as a teacher in 1964 and has been a member of the defendant, the Illinois Teachers' Retirement System (Retirement System), since that time. When Goff retired, he was the principal at Edwardsville Junior High School (Junior High). Goff retired from this position in 1993 and began drawing pension benefits from the

Retirement System in the amount of $ 3,300 per month. Goff testified that he actually received approximately $ 2,800 per month due to his paying the **[***2]** employee's contribution for the early retirement incentive program.

Goff pleaded guilty in October and November of 1995 to six separate counts of aggravated criminal sexual abuse for molesting two boys, D.L. and J.L. The Retirement System was notified that Goff had pleaded guilty to six counts of aggravated criminal sexual abuse, a class 2 felony. Thomas S. Gray, assistant general counsel for the Retirement System, investigated the matter and determined that the felonies were connected with, related to, and arose out of the plaintiff's service as principal at the Junior High. Gray notified Goff on November 8, 1995, that his pension with the Retirement System was revoked pursuant to section 16-199 of the Illinois Pension Code (40 ILCS 5/16-199 (West 1994)). **[*192]** On November 28, 1995, Goff filed a complaint for declaratory relief in the circuit court of Madison County, challenging the revocation of his pension. Goff filed a motion for summary judgment on August 15, 1997. The Retirement System filed a motion for summary judgment on September 2, 1997.

A hearing was held on the motions for summary judgment, and on September 30, 1997, the circuit court issued its decision granting the Retirement **[***3]** System's motion for summary judgment and denying Goff's motion for summary judgment. The court stated as follows:

"This Court does find there is [*sic*] sufficient undisputed material facts to enter a Declaratory Judgment in this case. This Court finds that Plaintiff's illegal conduct which gave rise to his felony convictions in Madison County, Illinois, and Washington County, Illinois, are not separate and distinct acts separated from his role as a teacher/administrator. *** To the contrary, the record as a whole shows a continuing series of activity [*sic*] in furtherance of scheming, planning, and carrying out his illegal activities which resulted in Plaintiff's felony convictions. This Court further finds that such scheming, planning[,] and carrying out of these illegal activities was [*sic*] related to and arising [*sic*] out of his service as a teacher which resulted in Plaintiff's felony convictions."

Goff filed a notice of appeal on October 27, 1997.

Goff claims on appeal that the Retirement System improperly revoked his pension pursuant to section 16-199 of the Illinois Pension Code.

Initially, we note that HN1 the proper standard of review for the entry **[***4]** of summary judgment is *de novo*. See *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 390, 620 N.E.2d 1073, 1077, 189 Ill. Dec. 756 (1993). Although we recognize that summary judgment is a drastic means of disposing of litigation, HN2 it is an appropriate measure in cases where there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. See *Crum & Forster Managers Corp.*, 156 Ill. 2d at 390-91, 620 N.E.2d at 1077.

A fundamental purpose of statutory construction is to ascertain and give effect to the intention of the legislature. See *In re Application of the County Collector of Du* **[**581]** *Page County for Judgment for Delinquent Taxes for the Year 1992*, 181 Ill. 2d 237, 244, 692 N.E.2d 264, 267, 229 Ill. Dec. 491 (1998) (*In re Du Page County Collector*). HN3 The best indicator of legislative intent is the actual language used by the legislature, which must be given its plain and ordinary meaning. See *In re Du Page County Collector*, 181 Ill. 2d at 244, 692 N.E.2d at 267; *Paris v. Feder*, 179 Ill. 2d 173, 177, 688 N.E.2d 137, 139, 227 Ill. Dec. 800 (1997). Additionally, courts should not depart from **[***5]** the plain meaning of a statute by reading into **[*193]** it exceptions, limitations, or conditions that conflict with the express legislative intent. See *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 193, 680 N.E.2d

265, 272, 223 Ill. Dec. 532 (1997). When the language of the statute is clear and unambiguous, courts must enforce the statute as written and may not resort to other aids for construction. See *Superior Structures Co. v. City of Sesser*, 292 Ill. App. 3d 848, 851, 686 N.E.2d 710, 712, 226 Ill. Dec. 927 (1997).

HN4 Section 16-199 of the Illinois Pension Code states, in relevant part, as follows:

"None 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 or her service as a teacher." 40 ILCS 5/16-199 (West 1994).

Goff argues that since the felonies for which he was convicted did not occur on school property or during school time, those felonies did not meet the statutory standard of "relating to or arising out of or in connection with his *** *service as a teacher*" (emphasis added) (40 ILCS 5/16-199 (West 1994)) in accordance with the language contained within the **[***6]** Illinois Pension Code. Goff claims that since the abuse occurred while he was in volunteer service as a church camp counselor and Boy Scout leader, his pension cannot be revoked in accordance with section 16-199 of the Illinois Pension Code. We disagree.

I. FACTS

A review of the record in this case shows that Goff used his "service as a teacher" to take advantage of both of the children that he sexually abused. Goff used his "service as a teacher" to apply for the scoutmaster position by listing on the application form the fact that he was the principal of the Junior High. Goff understood that boys in his scout troop would often later become students at the Junior High. Goff introduced himself to the Boy Scout Troop as the principal of the Junior High and would often refer to his position as principal when discussing various school activities with the boys. D.L. met Goff during his sixth-grade year, when Goff was his scoutmaster. The year after D.L. joined Boy Scouts, he began attending the Junior High. It was not until D.L.'s seventh-grade year that Goff began to sexually abuse him. Although the abuse occurred off of school property, Goff apparently intensified his efforts with **[***7]** D.L. at school by positioning himself in the hallway between classes so that he could see D.L. and have the opportunity to talk to him. While D.L. was at the Junior High, Goff would talk to D.L. about activities involving the Boy Scouts and church camp. Goff did not do this with other students. D.L. joined the wrestling team at the Junior High, and Goff, in his capacity as the **[*194]** Junior High's principal, made a point to attend the home wrestling matches in which D.L. was a participant. On one occasion, Goff even had D.L.'s mother come to his office at the Junior High to make arrangements for a weekend when Goff could take D.L. to a horse camp.

As we previously stated, the sexual abuse of D.L. did not occur until D.L. was a student at the Junior High. D.L.'s mother had indoctrinated him since he was very young to respect and obey the principal and teachers. D.L.'s mother allowed him to spend so much time with Goff because of his position as the principal of the Junior High. She believed that since he was in such a position, he would be a "safe" person for her son to be with. D.L. stated that he was induced to engage in the sexual contact with Goff, in part, because of Goff's position **[***8]** as the principal of his Junior High and based upon the "esteem and authority" that his position impressed upon him as a young child.

Goff met J.L., his other victim, when he was serving as a church camp counselor. **[**582]** Goff listed on his church camp application that he was a school principal. Goff admitted that some of the boys that attended church camp would eventually end up being students at the Junior High. When J.L.'s parents dropped him off at church camp for the first time, Goff introduced himself as the principal of the Junior High. Since J.L.'s parents are both professional educators, they were impressed by the fact that Goff was a principal. Since Goff was a principal, J.L.'s parents were "confident that *** [J.L.] would be in good hands in his

presence." J.L. stated that Goff introduced himself as the principal of the Junior High and that Goff would often talk at camp about his school experiences. During Goff's cultivation of J.L. and his parents, Goff began socializing with J.L.'s parents at their home as well as his. During most of these occasions, Goff would spend a great deal of his time discussing his experiences at school and as an educator. On one occasion, he invited **[***9]** J.L.'s parents to come to the Junior High. Goff gave them a tour of the school, showed them his office, and introduced them to his secretary. Goff also took J.L. to the Junior High and gave him a tour of the school. Goff invited J.L. to a Junior High dance that he was chaperoning in his role as principal. After the dance, Goff took J.L. to his home to spend the night. Goff frequently attended events at J.L.'s schools and would make a point to introduce himself to J.L.'s principal and teachers and inform them that he was the principal at the Junior High.

Since J.L. was spending a lot of time with Goff, his parents tried to "check him out". They made inquiries about Goff with people who were either parents or teachers employed in the Edwardsville school **[*195]** district. The reports that they received from these people were all positive. J.L.'s parents had also taught him to respect and obey the principal. J.L. stated that he was induced to engage in these activities in part because of Goff's status as a principal.

II. ANALYSIS

No case has interpreted the precise language used in the statute (40 ILCS 5/16-199 (West 1994)); hence, this is a case of first impression. Goff is attempting to **[***10]** elude the provisions of this statute by claiming that the felonies to which he pleaded guilty were not connected with, were not related to, and did not arise out of his "service" as a teacher. Goff would have this court believe that his pension can only be revoked if the felonies actually took place on school time or school grounds or during an extracurricular activity for which Goff was serving as a school chaperon. Such a construction is far too narrow. Courts often employ terms such as "incidental to" or "connected with" when defining the phrase "arising out of". *Lynch Special Services v. Industrial Comm'n*, 76 Ill. 2d 81, 86, 389 N.E.2d 1146, 27 Ill. Dec. 738 (1979). HN5 The statutory phrases "relating to", "arising out of", and "in connection with" are very broad terms. "An injury can be said to arise out of one's employment if its origin is in *some way* connected with the employment so that there is a casual connection between the employment and the *** injury". (Emphasis added.) *Consolidated Rail Corp. v. Liberty Mutual Insurance Co.*, 92 Ill. App. 3d 1066, 1068-69, 416 N.E.2d 758, 48 Ill. Dec. 485 (1981). Applying these standards, we believe that the record amply supports **[***11]** the conclusion that the abuse in question was related to, arose out of, and was connected with Goff's service as a principal.

The record reveals that Goff's behavior with respect to the victims was predatory. He used his "service as a teacher" to exert influence over the victims as well as their parents. It is clear that Goff attempted to and actually did impress the parents of the victims with the fact that he was the principal of the Junior High. This induced the parents to trust Goff. He was allowed to take the children to various places, and the children were allowed to spend the night at Goff's residence. Goff used his "service as a teacher" to apply for and receive the position of scoutmaster and church camp counselor, which, in turn, enabled Goff to commit the crimes that he eventually pleaded guilty to.

Goff was the proverbial wolf in sheep's clothing. But he got caught! He will not be allowed to escape the sanctions imposed by law. The legislative mandate is clear. Educators who use their position of trust **[*196]** to **[**583]** molest the children entrusted to them shall forfeit their pensions if convicted of a felony in connection therewith. About this there should be no mistake.

Goff took **[***12]** advantage of the victims as well as their parents and used and abused his "service as a teacher" to perpetrate the felonies that he eventually pleaded guilty to.

Goff's "service as a teacher" was merely one of many tools that he used to sexually abuse his victims. It is of no consequence that the felonies for which Goff was convicted were connected both to his "service as a teacher" and to other endeavors. It is clear that Goff's "service as a teacher" enabled him to commit the felonies that he eventually pleaded guilty to.

We also note that Goff argued that the trial court committed reversible error by considering the fact that he sexually abused J.L. on a school trip to Washington, D.C., and Williamsburg, even though he did not plead guilty to those crimes. It is clear when reviewing the record that the trial court recognized that Goff did not plead guilty to committing crimes in either of those locations. The trial court did state that Goff "used his service as a teacher/administrator during *** [the] school trip to further his illegal activity which resulted in his felony convictions." A review of the record shows, however, that no abuse of either victim occurred after the **[***13]** school trip. Goff claims that when the findings of a trial court are against the manifest weight of the evidence, it is the duty of the reviewing court to reverse. See *Cornstubble v. Ford Motor Co.*, 178 Ill. App. 3d 20, 24, 532 N.E.2d 884, 886, 127 Ill. Dec. 55 (1988). HN6 While this is generally true, an error by itself does not warrant a reversal, and a court of review will only vacate a judgment if an "error occurred which prejudiced the appellant or unduly affected the outcome." *Cox v. Doctor's Associates, Inc.*, 245 Ill. App. 3d 186, 207, 613 N.E.2d 1306, 1320, 184 Ill. Dec. 714 (1993). Additionally, if the trial court's decision is correct on the merits, it will not be reversed even if the trial court used an incorrect means to reach the decision, particularly if a retrial would result in the same disposition. See *In re Marriage of Benefield*, 131 Ill. App. 3d 648, 650, 476 N.E.2d 7, 9, 86 Ill. Dec. 831 (1985).

In light of the foregoing analysis, it is clear that even without the remarks regarding the school trip, the trial court could have found, as we have, that Goff's felonies were connected with his "service as a teacher."

Since the record clearly shows that Goff's **[***14]** scheming, planning, and carrying out of the felonies that he pleaded guilty to were related to and connected with his "service as a teacher", Goff's pension was **[*197]** properly revoked. Hence, we affirm the circuit court's decision granting summary judgment in favor of the Retirement System.

Affirmed.

KUEHN and HOPKINS, JJ., concur.