

**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.