



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

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GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Applicability of the State Officials
and Employees Ethics Act to Judges
Serving on the Board of Trustees of
the Judges Retirement System

Robert V. Knox
Executive Secretary
State Retirement Systems
2101 South Veterans Parkway
P.O. Box 19255
Springfield, Illinois 62794-9255

Dear Mr. Knox:

I have your letter inquiring whether the State Officials and Employees Ethics Act (the Ethics Act) (5 ILCS 430/1-1 *et seq.* (West 2004)) applies to judges who serve on the Board of Trustees of the Judges Retirement System of Illinois, in their capacity as board members. For the following reasons, it is my opinion that the judge trustees of the Judges Retirement System are not subject to the Ethics Act. These judges, however, are subject to the ethical standards set forth in the Code of Judicial Conduct.

The General Assembly created the Judges Retirement System of Illinois (the Retirement System) to enable judges "to accumulate reserves for themselves and their dependents for old age, disability, death, and termination of employment." 40 ILCS 5/18-102 (West 2004). The Retirement System is administered by a five-member Board of Trustees, comprised of the State Treasurer, the Chief Justice of the Supreme Court, and three "participating" judge trustees. 40 ILCS 5/18-135 (West 2004). The State Treasurer and the Chief Justice serve as *ex-officio* members of the Board of Trustees during their respective terms of office. 40 ILCS 5/18-135 (West 2004). The participating judge trustees are appointed to their positions by the Supreme Court and serve for three-year terms. 40 ILCS 5/18-135 (West 2004). To be a participating judge trustee, a person must currently be receiving compensation for personal services rendered as a judge of an Illinois court and be a participant in the Retirement System. 40 ILCS 5/18-108, 18-110 (West 2004). Termination of employment as a judge immediately disqualifies a participating judge trustee from continued service on the Board. 40 ILCS 5/18-135 (West 2004).

The General Assembly enacted the Ethics Act as part of a comprehensive ethics reform package intended to regulate ethical conduct, political activities and the acceptance of gifts by executive branch constitutional officers, legislative branch constitutional officers, General Assembly members and State employees. *See generally* 5 ILCS 430/1-1 *et seq.*, 5-5 *et seq.*, 10-10 *et seq.* (West 2004). The Ethics Act defines "State employee" as "any employee of a State agency." 5 ILCS 430/1-5 (West 2004). The phrase "State agency" is defined to encompass a broad range of governmental entities, including:

all officers, boards, commissions and agencies created by the Constitution, whether in the executive or legislative branch; all officers, departments, boards, commissions, agencies, institutions, authorities, public institutions of higher learning as defined in Section 2 of the Higher Education Cooperation Act, and bodies politic and corporate of the State; and administrative units or corporate outgrowths of the State government which are created by or pursuant to statute, other than units of local government and their officers, school districts, and boards of election commissioners; and all administrative units and corporate outgrowths of the above and as may be created by executive order of the Governor. "State agency" includes the General Assembly, the Senate, the House of Representatives, the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, the Senate Operations Commission, and the legislative support services agencies. "State agency" includes the Office of the Auditor General. "*State agency*" does not include the judicial branch. (Emphasis added.) 5 ILCS 430/1-5 (West 2004).

Based upon this definition of "State agency," the Ethics Act clearly applies only to the executive and legislative branches of government; it does not apply to the officers and employees of the judicial branch. Therefore, the requirements of the Ethics Act will apply to a judge who serves on the Board of Trustees of the Retirement System only if service on the Board is separate and apart from his or her judicial office.

As previously noted, under section 18-135 of the Illinois Pension Code (40 ILCS 5/18-135 (West 2004)), the Chief Justice serves on the Board of Trustees as an *ex-officio* member. Service on the Board of Trustees, therefore, is one of the official duties of the Chief Justice and is an inherent function of the judicial branch. Accordingly, because the General Assembly has determined that the judicial branch is not a "State agency," it is my opinion that the

Chief Justice, in her capacity as an *ex-officio* member of the Board of Trustees, is not subject to the Ethics Act's provisions.

A similar analysis applies to the participating judge trustees. Section 18-135 of the Pension Code requires, as a condition precedent to appointment, that the participating judge trustees be sitting judges and, thus, members of the judicial branch. Consequently, because the General Assembly has expressly excluded the judicial branch from the purview of the Ethics Act, it is my opinion that the participating judge trustees are not subject to the Ethics Act.

These conclusions are strongly supported by case law addressing the General Assembly's power to regulate the conduct of judges. In *Cusack v. Howlett*, 44 Ill. 2d 233 (1969), the Court concluded that, under the Illinois Constitution of 1870, only the Supreme Court was authorized to prescribe standards of judicial conduct. The Court held that "the General Assembly [was] without authority to enact standards of judicial ethics and that the provisions of the Governmental Ethics Act, insofar as they relate to judges and magistrates, [were] without constitutional sanction."¹ *Cusack*, 44 Ill. 2d at 244. The 1970 Constitution incorporates the Supreme Court's holding in *Cusack*. ILCS Ann., 1970 Ill. Const., art. VI, sec. 13(a), Constitutional Commentary, at 467 (Smith-Hurd 1993); 6 Record of Proceedings, Sixth Illinois Constitutional Convention 831-833.

¹The Illinois Governmental Ethics Act (added by 1967 Ill. Laws 3401, effective January 1, 1968, now codified at 5 ILCS 420/1-101 et seq. (West 2004)) imposes limitations and procedural requirements on legislators and other officials relating to economic conflicts of interests and other ethical matters. It also requires particular State and local officials and employees to file annual statements of economic interest. 5 ILCS 420/4A-101 through 4A-107 (West 2004). The original Act required judges to comply with economic disclosure procedures as established by the Supreme Court. The portion of the Act concerning the judiciary was repealed by Public Act 77-1806, effective January 24, 1972.

Subsequent to adoption of the 1970 Constitution, the Supreme Court again acknowledged the *Cusack* holding as providing "a clear and unambiguous recognition of [the Supreme Court's] authority to regulate the conduct of judges, *on and off the bench*." (Emphasis added.) *People ex rel. Harrod v. Illinois Courts Comm'n*, 69 Ill. 2d 445, 465 (1977). The *Harrod* court concluded that the Supreme Court "was thereby vested with the exclusive authority to promulgate rules of judicial conduct for the judges of this State." *Harrod*, 69 Ill. 2d at 466. *Harrod* confirmed that the authority to initiate disciplinary proceedings against a judge rests with the Judicial Inquiry Board. "The grounds for a complaint are to be found within the framework of this court's rules of judicial conduct, while the determination of whether the evidence warrants the filing of a complaint rests with the Board." *Harrod*, 69 Ill. 2d at 468. Thus, with respect to judges, both the promulgation of rules and the prosecution of violations are constitutionally within the exclusive authority of the judiciary.

In 2003, a court again addressed the General Assembly's power to regulate the conduct of judges. *Illinois State Bar Ass'n v. Ryan*, Docket No. 98-MR-363 (Circuit Court, Sangamon County), considered the constitutionality of the now repealed State Gift Ban Act (5 ILCS 425/1 *et seq.* (West 2002), repealed by Public Act 93-617, effective December 9, 2003), which was the precursor to portions of the current Ethics Act. The Gift Ban Act was challenged as violating the separation of powers clause of the Constitution by attempting to regulate the

conduct of judges.² Specifically, the plaintiffs' complaint alleged that by "establishing rules of conduct for judges and judicial candidates [and by] directing the Chief Justice [of the Supreme Court] to appoint an ethics commission * * * with authority to discipline judges[,]" the General Assembly had violated the separation of powers clause of the Constitution. The circuit court upheld the plaintiffs' challenge and entered an order finding certain specified provisions of the Gift Ban Act unconstitutional as applied to the judicial branch of government.

These decisions clearly establish that the regulation of the conduct of judges is a power vested exclusively in the judiciary. The General Assembly has attempted to avoid potential separation of powers challenges to the Ethics Act by excluding the judicial branch from the Act's scope. Although section 5-50 of the Ethics Act expressly indicates that the Board of Trustees of the Retirement System is subject to the *ex parte* communications restrictions of that section (5 ILCS 430/5-50(e) (West 2004)), it is well established that a statute must be read as a whole and no word or paragraph should be interpreted so as to be rendered meaningless. *Williams v. Staples*, 208 Ill. 2d 480, 487 (2004). When section 5-50 of the Act is read in conjunction with the definition for "State agency," it is clear that neither the Chief Justice nor the other judges serving on the Board of Trustees are subject to the Ethics Act. The State Treasurer, however, as an executive branch constitutional officer, must comply with the Ethics Act's

² The Gift Ban Act generally prohibited State officials and employees in the three branches of government, as well as their spouses and certain immediate family members, from soliciting or accepting gifts from "prohibited sources," as that term was defined. 5 ILCS 425/5, 10 (West 2002); *see also Flynn v. Ryan*, 199 Ill. 2d 430, 432 (2002). The Gift Ban Act also mandated that ethics officers be designated for each branch of government (5 ILCS 425/35 (West 2002)) and contained enforcement provisions, including mandating that each branch of government create an ethics commission to hear complaints against persons falling under its jurisdiction and to impose fines or other sanctions for violations of its provisions. 5 ILCS 425/45(a)(1) through (a)(7) (West 2002).

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provisions, including those in section 5-50 of the Act, while serving as an *ex-officio* member of the Board of Trustees.

Although the Ethics Act does not apply to judges serving on the Retirement System Board, their acts are extensively regulated. The Supreme Court has adopted the Code of Judicial Conduct, which establishes standards for the ethical conduct of judges, both in the context of their court duties and also with respect to their personal, extrajudicial activities. The Code of Judicial Conduct is similar to and in some respects more stringent than the provisions of the Ethics Act. *See* 155 Ill. 2d Rs. 61-76. The Code's canons address, among other things, the ethical conduct of judges, *ex parte* communications with judges (188 Ill. 2d R. 63(A)(4)), the acceptance of gifts by judges and members of their families (155 Ill. 2d R. 65(C)(4)), and the political activities of judges and judicial candidates (155 Ill. 2d R. 67). Moreover, the canons and rules provide a structure for regulating conduct through disciplinary agencies.

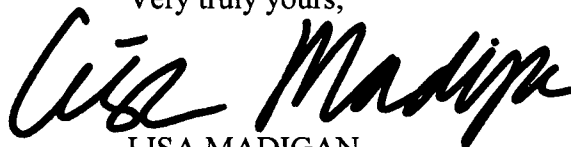
The Judicial Inquiry Board is vested with the authority to "conduct investigations * * * [and] receive or initiate complaints" concerning alleged misconduct by judges and associate judges. Ill. Const. 1970, art. VI, §15(c). This function is equivalent to the duty of Executive Inspectors General under the Ethics Act to "receive and investigate allegations of violations" of the Ethics Act and to "file pleadings * * * with the Executive Ethics Commission." 5 ILCS 430/20-20 (West 2004). Similarly, the Constitution provides for an independent Courts Commission to conduct hearings into matters brought before it by the Judicial Inquiry Board (Ill. Const. 1970, art. VI, §15(e)), while the Ethics Act creates the Executive Ethics Commission to serve the same purpose with respect to matters filed by the Executive Inspectors General. 5 ILCS

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430/20-15 (West 2004). Moreover, the Courts Commission has the authority to remove from office, suspend without pay, censure or reprimand a judge for willful misconduct in office, persistent failure to perform his or her duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute. Ill. Const. 1970, art. VI, §15(e). Clearly, therefore, the conduct of the judges in their capacity as trustees of the Retirement System is subject to regulation by the Supreme Court and the disciplinary agencies created by the Constitution.

In summary, the General Assembly drafted the Ethics Act to specifically exclude from the Act's provisions the judicial branch of State government. Consequently, it is my opinion that neither the Chief Justice nor the other judges serving on the Board of Trustees of the Retirement System are subject to the Ethics Act in their capacity as board members. The Chief Justice and the other judges serving on the Board of Trustees, however, are obligated to carry out their duties and conduct themselves in accordance with the standards established in the Code of Judicial Conduct.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is fluid and cursive, with the first name "Lisa" written in a larger, more prominent script than the last name "Madigan".

LISA MADIGAN
ATTORNEY GENERAL