

IPPFA
ANNUAL TRAINING CONFERENCE
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LAKE GENEVA

PENSION BOARD TRUSTEE

ETHICS

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Consequences of Ethics Violations

1. Civil Liability - Breach of Fiduciary Duty
2. Criminal Liability
3. Local Gift Ban – Business Offenses
4. Removal from Office

I.

Civil Penalties

Prohibited Transactions 40 ILCS §5/1-110

A Fiduciary may not:

1. Sale or exchange or leasing of assets of pension fund for greater or less than adequate consideration with “party in interest.”
2. Deal with the assets of the pension fund for his or her own interest or for their own account.

3. In individual capacity act in any transaction on behalf of party whose interests are adverse to the interests of pension board or adverse to the interests of participants and beneficiaries.

4. Receive any consideration for his own personal account from any party dealing with the pension fund

Remedy: Liability for breach of fiduciary duty.

II. Criminal Penalties

Amends 40 ILCS §5/1-110, “Prohibited Transactions” and creates subsection (d) which bars a fiduciary of a pension fund established under Article III and Article IV from knowingly causing or advising a pension fund to engage in an investment transaction when the fiduciary:

Criminal Penalties

- a. Has any direct interest in the outcome, gains, or profits of the investment advisor through which the investment transaction is made; or
- b. Has a business relationship with that investment advisor that would result in a pecuniary benefit to the fiduciary as a result of this investment transaction.

This new provision does not define what constitutes a business relationship” or “pecuniary benefit.” Violation of this provision is a Class 4 felony.

III.

Anti-Fraud Provisions

Two new provisions; §5/3-114.5 (police) and §5/4-113.8 (fire), create criminal sanctions for “Fraud”:

- a. It is a Class A Misdemeanor for any person, member, trustee, or employee of the board:
 - i. Who knowingly makes any false statement or falsifies or permits to be falsified, any record of the fund in an attempt to defraud such fund as a result of such act; or
 - ii. Intentionally or knowingly defrauds a fund in any manner.

IV.

Prohibition on Gifts

The new “gift ban” section of the Pension Code, 40 ILCS §5/1-125, makes certain portions of the State Officials and Employees Ethics Act applicable to Article 3 and Article 4 Pension Fund Trustees.

a. Definitions.

For purposes of §5/1-125 of the Illinois Pension Code, the following definitions apply:

- i. Gift
- ii. Prohibited Source

Prohibition on Gifts

i. Gift.

Any (1) gratuity, (2) discount, (3) entertainment, (4) hospitality, (5) loan, (6) forbearance, (7) or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, or an honoraria for speaking engagements related to or attributed to government employment or the official position of an employee, member, or officer (5 ILCS §430/1-5).

Prohibition on Gifts

ii. Prohibited Source.

A person or entity who:

1. Is seeking official action by the board or a board member;
2. Does business or seeks to do business with the board or a board member;
3. Has interest that may be substantially affected by the performance or non-performance of the official duties of the pension board member; or
4. Is registered or required to be registered with the Secretary of State under the Lobbyist Legislation Act.

Prohibition on Gifts

b. Prohibitions.

Prohibits any trustee of an Article 3 or Article 4 pension fund from intentionally soliciting or accepting any gift from any prohibited source.

Prohibition on Gifts

c. Exceptions.

The following exceptions are relevant:

- i. Food or refreshments not exceeding \$75.00 in value, per person, on a single calendar day, provided that food or refreshments are consumed on the premises on which they were purchased or prepared or catered;
- ii. Any item or items from any one prohibited source during any calendar year, having an accumulated total of less than \$100.00.

Each of the exceptions listed above are mutually exclusive and independent of each other.

V.

The “Illinois Governmental Ethics Act”

This Act amends the “Illinois Governmental Ethics Act” (5 ILCS §420/4A-101) to require that all Pension Board trustees file a “verified written statement of economic interests”. *See 5 ILCS §420/4A-101(o).*

These forms will be mailed to pension board trustees by the county clerk in accordance with the following procedures:

The “Illinois Governmental Ethics Act”

- a. A sample statement of the economic interest form can be found on the Secretary of State’s website:

www.cyberdriveillinois.com/publications/indexpub.html#statement

- b. The statement of economic interest shall be filed with the county clerk of the county in which the principal office of the unit of local government with which the person is associated is located.

The “Illinois Governmental Ethics Act”

- c. On or before February 1st annually, the “chief administrative officer” of each unit of local government with a Pension Board shall certify to the county clerk the names and addresses of those persons required to file.

- d. On or before April 1st annually, the county clerk shall notify each Pension Board trustee of the requirements for filing statements of economic interests.

The “Illinois Governmental Ethics Act”

- e. On or before May 1st annually, the Pension Board trustee shall file the verified written statement of economic interests with the county clerk.
- f. Willfully filing a false or incomplete statement constitutes a Class A misdemeanor.

The “Illinois Governmental Ethics Act”

- g. A pension board trustee who fails to file a statement shall be ineligible to sit on the board and must forfeit his or her position.
- h. The county clerk shall provide the county’s State’s Attorney with the name of any trustee who fails to file the statement.
- i. The State’s Attorney shall bring an action in *quo warranto* against any person who fails to file “by either May 31 or June 30 of any given year.”

VI. Investment Transparency

- a. Public Act 96-0006 creates a new statute, 40 ILCS §5/1-113.16 specifically addressing investment transparency.
- b. Two subsections in this new statute apply to Article 3 and Article 4 pension funds.
- c. Section 1-113.16(b) mandates that all pension funds comply with the Open Meetings Act. See 5 ILCS § 120/1 et seq.

Investment Transparency

- d. Article 3 and Article 4 pension funds should view this provision for what it is, a clear message from the General Assembly that they not violate the Open Meetings Act.
- e. Section 1-113.16(c) mandates that any pension fund that establishes a committee must ensure that the majority of the members on the committee are board members. Some pension funds may create “investment committees.” Pursuant to this statute, the majority of the committee members must be pension board trustees.

VII.

No Monetary Gain on Investments

- a. Public Act 96-006 creates a new statute, 40 ILCS 5/1-130, which specifically prohibits any pension board trustee from “...knowingly [having] any direct interest in the income, gains, or profits of any investments made on behalf of the [pension fund].”
- b. This statute also applies to a pension board trustee’s spouse.

No Monetary Gain on Investments

- c. Additionally, a pension board trustee cannot receive “...any pay or emolument for services in connection with any investment.”
- d. Violation of this section constitutes a Class 3 Felony.

VIII. Fraud

- a. Public Act 96-006 creates a new statute, 40 ILCS 5/1-135, which establishes criminal penalties for any person who “...knowingly makes any false statement or falsifies or permits to be falsified any record of a [pension fund] in an attempt to defraud the [pension fund].”
- b. Violation of this section constitutes a Class 3 Felony.

IX.

Contingent and Placement Fees

- a. Public Act 96-006 creates a new statute, 40 ILCS 5/1-145, prohibiting contingent and placement fees.

- b. “No person or entity shall retain a person or entity to attempt to influence the outcome of an investment decision of or the procurement of investment advice or services of a [pension fund], contingent in whole or in part upon the decision or procurement.”

Contingent and Placement Fees

- c. Violation of this section constitutes a business offense subject to a fine of not more than \$10,000. Additionally, a person convicted of violating this section is prohibited from working with pension funds for 3 years.

X.

Predatory Lending Certification

A. Introduction

Senate Bill 65, Public Act 95-521 became effective August 28, 2007, amended the “prohibited transactions” Section of Article 1 of the Illinois Pension Code, 40 ILCS §5/1-110.10.

The amendments require the following “Illinois Finance Entities” to certify to the Pension Board that they do not engage in predatory lending practices. “Illinois Finance Entity” is defined as any entity or person;

1. Chartered under the Illinois Banking Act
2. Chartered under the Illinois Savings Bank Act
3. Chartered under the Illinois Credit Union Act
4. Chartered under the Illinois Savings and Loan Act of 1985
5. Any person or entity licensed under the Residential Mortgage License Act of 1987
6. Any person or entity licensed under the Consumer Installment Loan Act
7. Any person or entity licensed under the Sales Finance Act

The term “Illinois Finance Entity” will mean any institution meeting the above criteria in which your pension board deposits money, (i.e., your custodian or other financial entities in which you have deposited pension fund assets or made investments such as Certificates of Deposit). The key to this legislation is whether the “Illinois Finance Entity” is chartered or licensed under the above referenced Illinois provisions. This would exclude mutual funds and other institutions created or licensed under federal law.

The responsibilities of a Pension Board fall into three areas:

B. Initial Certification

The Act requires an initial certification by February 28, 2008 for entities that a Board has been using by August 28, 2007. The certificate created by the Division of Insurance for this purpose is attached, and can also be downloaded from:

www.idfpr.com/doi/pension/sirens/IllinoisFinanceEntityCertificationForm.pdf

If a Board wishes to invest or deposit assets with an entity at any other time, the Board must obtain a certification form before the Board invests or deposits any funds.

C. Annual Certification

Once a certification is obtained, the Board is required to obtain forms annually. The annual submission of a form is due on February 28th of every year.

D. Non-Complying Entities

If an entity does not provide the required compliance by February 28th, the Board must notify them of their need to comply. The entity then has 30 days in which to inform the Board if they intend to complete the form. If after 90 days, the entity has not provided the required certificate, the Board must inform the Department of Insurance and must also begin to divest any assets that the entity is holding.

XI.
Public Officer Prohibited Activities Act –
Prohibited Interests in Contracts
50 ILCS §105/3

- A. Applies to any person holding elected or appointed office under Illinois Law or Constitution

- B. Prohibits Officer (Trustee) from being “financially interested” directly in his own name or indirectly in name of other person from:
 - 1. In any contract, or
 - 2. Performance of any work, or
 - 3. Making or letting of any contract,
 - 4. For which the officer may be called upon to act or vote

C. Also prohibits official from acting as an “agent” for any entity for any application or bid for contract or work, for which the officer may be called upon to act or vote.

D. Also prohibits officer from receiving directly or indirectly, any thing of value as “gift” or “bribe”

E. Penalties

1. Criminal violation is Class 4 Felony

2. Civil – Contract is Void

F. Exceptions:

1. Official has less than 7 1/2% share of ownership,
2. Official publically discloses ownership,
3. Official abstains from voting,
4. Contract is approved by a majority of other members,
5. Note: Sealed bid requirements on dollar amounts differ