

Nos. 127527 & 127594 (cons.)

**IN THE
SUPREME COURT OF ILLINOIS**

JOHN O'CONNELL,

Plaintiff-Appellee,

v.

COOK COUNTY, *et al.*,

Defendants-Appellants.

On Appeal from the Appellate Court of Illinois
First Judicial District, No. 20-1031
There Heard On Appeal From The Circuit Court Of Cook County, Illinois
No. 20-CH-288

BRIEF OF DEFENDANT-APPELLANT COUNTY OF COOK

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ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

John O'Connell, a former employee of the County of Cook, filed a complaint in the circuit court seeking declaratory judgment and *mandamus* against the County and the Board of Trustees of the County Employees' and Officers' Annuity Fund ("Pension Board"), when he stopped receiving ordinary disability benefits from the County Employees' and Officers' Annuity and Benefit Fund ("Pension Fund"). O'Connell alleged that the Illinois Pension Code ("Pension Code") and the Pension Protection Clause of the Illinois Constitution ("Pension Protection Clause") entitled him to ordinary disability benefits even after the County terminated his employment because of his inability to work. O'Connell also alleged a due process claim against the Board for terminating his benefits without a hearing. The circuit court dismissed O'Connell's complaint. The appellate court reversed, holding that the Pension Fund must continue paying ordinary disability benefits to O'Connell and that the County must make contributions to the Pension Fund for discharged employees who are receiving ordinary disability benefits. All questions presented for review are raised on the pleadings.

ISSUE PRESENTED

Whether the County must make annuity contributions to the Pension Fund on O'Connell's behalf, where such contributions are required only when an employee is entitled to ordinary disability benefits, for which O'Connell is ineligible because he was discharged from County employment.

JURISDICTION

On January 9, 2020, O’Connell filed his complaint in this matter. C. 8-47.¹ On September 14, 2020, the circuit court dismissed O’Connell’s complaint in its entirety. C. 220-29. Plaintiff filed a timely notice of appeal on September 28, 2020. C. 230-31. The appellate court had jurisdiction pursuant to Supreme Court Rules 301 and 303.

The appellate court issued its opinion on June 30, 2021. A1-17. On August 4, 2021, the County timely petitioned for leave to appeal. A18-132. This court granted that petition on September 29, 2021. A133. This Court has jurisdiction over the County’s appeal pursuant to Illinois Supreme Court Rule 315.

STATUTORY & CONSTITUTIONAL PROVISIONS INVOLVED

This appeal involves Article 9 of the Pension Code, 40 ILCS 5/9-101, 40 ILCS 5/9-107, 40 ILCS 5/9-108, 40 ILCS 5/9-116, 40 ILCS 5/9-156, 40 ILCS 5/9-157, 40 ILCS 5/9-160, 40 ILCS 5/9-181, 40 ILCS 5/9-185, and the Pension Clause of the Illinois Constitution, Ill. Const. 1970, art. XIII, § 5, the text of which is reproduced in the appendix to this brief.

STATEMENT OF FACTS

I. Article 9 of the Pension Code

Article 9 of the Pension Code establishes the Pension Fund and the Pension Board. *See* 40 ILCS 5/9-101; 40 ILCS 5/9-107; 40 ILCS 5/9-185.

¹ We cite the common law record as “C. ____,” and the appendix to this brief as “A. ____.”

Pursuant to the Pension Code, participants in the Pension Fund may be eligible for two types of disability benefits: (1) duty disability benefits for employees who become disabled as a result of an on-duty injury, 40 ILCS 5/9-156; and (2) ordinary disability benefits for employees who become disabled due to any other cause, 40 ILCS 5/9-157. Employees are entitled to ordinary disability benefits for a period equal to 1/4 of the total service rendered prior to the date of disability but in no event more than 5 years. 40 ILCS 5/9-157(e). For purposes of Article 9, “employee” is defined as “[a]ny employee of the county employed in any position in the classified civil service of the county.” 40 ILCS 5/9-108.

Under the Pension Code, the Pension Board—a legal entity wholly separate from the County—determines eligibility for both types of disability benefits and pay benefits to employees. *See* 40 ILCS 5/9-185. The County plays no role in that determination or in making payments to employees, but is required to “contribute all amounts ordinarily contributed by it for annuity purposes for any employee receiving ordinary disability benefit as though he were in active discharge of his duties during such period of disability.” 40 ILCS 5/9-181.

II. O’Connell’s Leave And Termination

O’Connell began working for the County in 1999. C9, ¶¶6. In 2001, after developing a health condition, the County granted O’Connell an accommodation and he continued to work until 2016. *Id.* In late 2016, due to his health, O’Connell could no longer work and took paid leave from the County. C15, ¶¶30-

31. In 2017, after exhausting his paid leave, O'Connell applied for ordinary disability benefits from the Fund. C10, ¶ 7; C15, ¶ 31; C30. The Pension Board approved O'Connell's application for ordinary disability benefits. C10, ¶ 7.

On May 16, 2019, the County sent O'Connell a letter requesting his return-to-work date and stating that he would be terminated if not medically released to return to work by May 29, 2019. C70. On June 13, 2019, the County granted O'Connell an extension of time, until June 29, 2019, to provide medical documentation with his projected return date and/or authorizing him to return to work. C83. O'Connell could not provide a return date because he is permanently unable to work. C10, ¶ 8. On July 1, 2019, the County terminated O'Connell's employment for failing to provide a return date. C85. Following O'Connell's termination, the Pension Board stopped paying him ordinary disability benefits. C10, ¶ 9.

III. Procedural Background

On January 9, 2020, O'Connell filed a complaint in the circuit court seeking declaratory judgment and *mandamus* against the County and the Pension Board, alleging that the Pension Code and the Pension Protection Clause entitle him to ordinary disability benefits even after the County terminated his employment. C. 8-47. The circuit court dismissed O'Connell's complaint, holding that: (1) there was no actual controversy between the County and O'Connell; (2) O'Connell had no right to continued employment with the County while receiving disability benefits, nor a right to continued County

contributions to the Pension Fund following his termination; and (3) that O'Connell lacks standing to seek *mandamus* against the County. C. 220-29.

The circuit court explained that Article 9 contains neither language that supports the continuance of disability benefits following employment termination nor any language defining a former employee as an “employee” for disability benefits purposes. A140-141. It further explained that while O'Connell argues that benefits can only be terminated under certain circumstances, 40 ILCS 5/9-157 of the Pension Code addresses triggering events that terminate an *employee's* benefits, but because O'Connell is not an employee, he is therefore not entitled to receive any benefits. *Id.*

O'Connell appealed, C. 230-31, challenging the dismissal of two claims against the County: (1) his request for a declaratory judgment that continued employment is unnecessary to receive ordinary disability benefits and that the termination of his disability benefits violated the Pension Code and the Illinois Constitution; and (2) his request for a writ of *mandamus* ordering the County to reinstate its contributions to the Pension Fund for his ordinary disability benefits. A190.²

The appellate court reversed, holding that former County employees—whether they have been terminated or voluntarily leave—have a contractual

² O'Connell abandoned on appeal his claims related to his termination, his claim that his termination violated the Pension Code and the Pension Protection Clause, and his request for a writ of *mandamus* ordering the County to reinstate him until he exhausts his ordinary disability benefits.

right to receive ordinary disability benefits post-employment, and that their former employer must make contributions to the Pension Fund. A1-17. Although the appellate court stated that it did not find Article 9 ambiguous, *id.* at ¶ 28, it concluded that “the canons of liberal construction and the beneficial nature of pension laws” indicate that “the term ‘employed’ is broad enough to encompass persons such as O’Connell who began receiving disability benefits when they were actively working,” *id.* at ¶ 24.

The court offered two reasons for this conclusion. First, the court noted that Article 9 sets forth a number of “triggering events” that terminate an individual’s ordinary disability. *Id.* at ¶¶ 18-19. Because “termination” is not among those events, the court claimed, one could “presume that the legislature did not intend to include termination as a triggering event under some other guise.” *Id.* at ¶ 26. The court also thought significant that the language setting out those triggering events “refers to an individual as an ‘employee’ even though that person has been receiving ordinary disability payments for some time and is therefore *no longer working* as a county employee.” *Id.* at ¶ 18. Second, the appellate court concluded that, because Article 9’s provisions “demonstrate a legislative intent to provide at least several years of benefits to disabled employees to ensure they have some income during their disability and to continue those benefits without a gap onwards into their retirement years,” reading termination from employment to disqualify an individual for ordinary disability benefits would lead to an “absurd result,” by allowing counties to

“simply fire severely disabled employees even after a brief period of disability” to avoid paying those employees’ pension contributions.” *Id.* at ¶ 27.

ARGUMENT

Having been discharged by the County for failing to provide a return-to-work date, O’Connell now claims that his entitlement to disability benefits under Article 9 of the Pension Code—a benefit of his employment with the County—survives his termination from County employment and requires the County to continue making pension contributions on his behalf after his termination. The appellate court agreed, concluding that the term “employee” encompasses both current and former County employees.

This court reviews this conclusion *de novo* because it involves a matter of statutory interpretation arising on a motion to dismiss, *e.g.*, *Henderson Square Condominium Ass’n v. LAB Townhomes, LLC*, 2015 IL 118139, ¶¶ 34, 61; *People ex rel. Madigan v. Ill. Commerce Comm’n*, 231 Ill. 2d 370, 380 (2008), and should reverse because it is irreconcilable with the plain language of Article 9 of the Pension Code, which makes unmistakably clear that only *current* County employees are entitled to ordinary disability benefits and pension contributions. In reaching a contrary conclusion, the appellate court misapplied basic principles of statutory construction, evinced a fundamental misunderstanding of disability benefits under Article 9, and invoked a baseless concern about absurd results that this court specifically rejected nearly 40 years ago. We address these problems in turn.

I. ARTICLE 9 DOES NOT ENTITLE FORMER EMPLOYEES TO ORDINARY DISABILITY BENEFITS OR EMPLOYER CONTRIBUTIONS.

This appeal can be resolved on the plain language of Article 9 alone. It is well settled that statutes should be interpreted and applied in the manner in which they are written, and may not be rewritten by a court to make them consistent with the court's policy views. *Kozak v. Retirement Board of Firemen's Annuity & Ben. Fund*, 95 Ill. 2d 211, 220 (1983) (citing *In re Griffin* 92 Ill. 2d 48, 52 (1982)). Rather, a court must begin its analysis with the operative statutory language, reading that language not in "isolation," but in the context of the entire statute, keeping in mind that the legislature did not intend "absurdity, inconvenience, or injustice." *Slepicka v. Ill. Dep't of Pub. Health*, 2014 IL 116927, ¶31. If the statutory language is clear and unambiguous, a reviewing court must apply the statute according to its terms, without resorting to aids of statutory construction. *Id.*; *Branson v. Department of Revenue*, 168 Ill. 2d 247, 254 (1995).

Here, the language of Article 9 is clear. It provides ordinary disability benefits only to "employee[s]," 40 ILCS 5/9-157, and requires the County to "contribute all amounts ordinarily contributed by it for annuity purposes for any *employee* receiving ordinary disability benefit as though he were in active discharge of his duties during such period of disability." 40 ILCS 5/9-181 (emphasis added). Article 9 defines an "employee" as "[a]ny employee of the county *employed in any position* in the classified civil service of the county." 40

ILCS 5/9-108 (emphasis added). In other words, Article 9 requires payment of ordinary disability and pension contributions to individuals employed in a position in the County's civil service classification.

This is confirmed by the broader text of Article 9, which demonstrates that the legislature did not intend that individuals discharged from County employment receive ordinary disability benefits. As Article 9 explains, “[a]n employee who has withdrawn from service or was laid off for any reason, who is absent from service thereafter for 60 days or more who re-enters the service subsequent to such absence is not entitled to ordinary disability benefit unless he renders at least 6 months of service subsequent to the date of such last re-entry.” 40 ILCS 5/9-157. Elsewhere, Article 9 explains that any individual who has been discharged from service is considered to have withdrawn from service. 40 ILCS 5/9-116. Read together, these provisions make clear that the legislature intended not only that discharged employees be ineligible for ordinary disability benefits, but that such discharged employees who are absent from service for more than 60 days and then reenter service *continue* to be ineligible for such benefits until they have served for 6 months.

A contrary reading of Article 9 would lead to absurd, unjust results. If, as O’Connell believes, Article 9 entitles discharged employees to ordinary disability benefits, then that would mean that a disabled employee who is *permanently* discharged from service—even for gross misconduct—would receive more favorable treatment under Article 9 than a disabled employee

who is merely *temporarily* laid off due to budgetary concerns and then returns to service. Under Section 5/9-157, the latter employee would be ineligible for disability benefits for six months following his return to service, while the former employee who has not returned to service—indeed, *could not* return to service due to the nature of his discharge—would continue collecting disability benefits over that same period of time. It is absurd to think that the legislature would have intended that Article 9 treats more favorably individuals who are permanently discharged for cause than individuals who were temporarily laid off through no fault of their own and have since returned to government service.³ That absurdity only confirms what the language of Article 9 already makes plain: discharged employees are not entitled to ordinary disability benefits.

That plain language defeats O’Connell’s claims. As O’Connell admits in his complaint, C. 15-17, he was not employed in a position in the County’s classified civil service at the time he claims to be entitled to ordinary disability benefits or pension contributions. To the contrary, he had been formally discharged from County employment—a discharge determination he does not challenge on appeal—and thus was not employed in the County’s classified civil service. Indeed, as a discharged employee, O’Connell “is obviously not

³ If anything, the legislature would have intended for the temporarily laid-off employee willing to return to public service to receive more favorable treatment, since one purpose of government pension benefits is to *encourage* qualified individuals to enter public service. *E.g.*, *Carmichael v. Laborers’ & Ret. Bd. Empls. Annuity & Ben. Fund*, 2018 IL 122793, ¶28.

‘employed,’ in any sense of the word.” *Di Falco v. Board of Trustees*, 122 Ill. 2d 22, 28 (1988). And because O’Connell is not employed by the County’s classified civil service, he is not an “employee” under Article 9, and thus is not entitled to ordinary disability benefits. Nor will he have any such entitlement until he reenters the service for at least six months, given that he has now been discharged for more than 60 days. Because the County is required to make pension contributions for disabled individuals only when they are “receiving ordinary disability benefit[s],” 40 ILCS 5/9-181, O’Connell’s ineligibility for ordinary disability benefits relieves the County of any obligation to make contributions on his behalf. As a result, O’Connell’s claims against the County, all of which are premised on his entitlement to ordinary disability benefits and contributions, C.18-20, 22-23, fail as a matter of law, requiring their dismissal.

II. THE APPELLATE COURT’S INTERPRETATION OF ARTICLE 9 RESTS ON MULTIPLE LEGAL ERRORS.

In reaching a contrary conclusion, the appellate court ignored the plain language of Article 9, basic canons of statutory construction, and this court’s controlling decision in *Di Falco*. Despite acknowledging that Article 9 specifically defines an “employee” as a person “*employed* in any position in the classified civil service,”⁴⁰ ILCS 5/9-108(a) (emphasis added), and despite agreeing that this language is unambiguous, (A13 ¶28), the appellate court never even *attempted* to apply that plain statutory language here. Instead, the court immediately employed the “canons of liberal construction” to determine whether O’Connell was an “employee” for purposes of receiving ordinary

disability benefits. *Id.* ¶24. That was error— when statutory language is plain, a court’s only task is to apply that language, without resort to further tools of construction. *Branson*, 168 Ill. 2d at 254. The canon of liberal construction of pension statutes is not exempt from that settled rule; to the contrary, this court has been clear that such liberal construction is appropriate only when the language of a pension statute is unclear. *Kanerva v. Weems*, 2014 IL 115811, ¶36.

The appellate court further erred in its application of the canons of construction. The court thought it particularly significant that the sections of Article 9 identifying the various events that require termination of a person’s ordinary disability benefits use the word “employee,” despite the fact that the “person has been receiving ordinary disability payments for some time and is therefore *no longer working* as a county employee.” A7-8, ¶18. In other words, the court believed that the use of the term “employee” to describe individuals no longer working for the County demonstrated that the legislature intended that term to encompass both current and former employees. But in assuming that individuals receiving disability benefits are no longer County employees, the court evinced a fundamental misunderstanding of Article 9— unlike other articles of the Pension Code that require a disabled individual to be suspended or retire from government service, *e.g.*, 40 ILCS 5/3-114.2, Article 9 nowhere requires disabled employees to resign from service in order to receive benefits. To the contrary, Article 9 contemplates that disabled individuals will remain

in government service and eventually retire. *See* 40 ILCS 5/9-160 (providing annuity for individuals who withdraw from service after exhausting their disability benefits). The legislature’s use of the term “employee” when describing when ordinary disability benefits expire thus provides no support for the appellate court’s conclusion that discharged individuals must be considered employees under Article 9.

Equally flawed is the appellate court’s conclusion that Article 9’s failure to specify that termination of employment disqualifies an individual from receiving disability benefits indicated a legislative intent that termination does not disqualify an individual from receiving those benefits. A12, ¶26. In reaching this conclusion, the appellate court overlooked that, by specifically limiting ordinary disability benefits to “employees,” and defining “employee” to encompass only individuals actually employed by the County, the legislature made clear its intent that termination of employment disqualifies an individual from receiving disability benefits. There was no need for the legislature to include additional language to clarify what the existing language already made readily apparent—namely, that an individual who has been discharged from employment “is obviously not ‘employed,’ in any sense of the word.” *Di Falco*, 122 Ill. 2d at 28.

Finally, the appellate court’s belief that it would be absurd to deny disability benefits to former employees because doing so would allow governments to simply fire disable employees rather than pay them disability

benefits (A12-13, ¶27) has already been rejected by this court. As this court explained in *Di Falco*, “there are safeguards to prevent such abuse and the possibility of it happening are extremely minimal, if not nonexistent.” 122 Ill. 2d at 31. Termination decisions and pension decisions are made by different government bodies, and termination decisions require either a showing of cause or, if cause is not necessary, good faith. *See id.*

O’Connell abandoned any claim that his discharge was unlawful, and does not dispute that these safeguards were unavailable to him. Nor could he, since County employees who are union members may grieve their termination in accordance with the terms of their collective bargaining agreements, and non-union employees may appeal termination decisions before the County’s Employee Appeals Board. Code of Ordinances, Cook County, Illinois § 44-50.

In sum, every reason the appellate court gave in support of its conclusion that O’Connell is entitled to ordinary disability and County pension contributions is legally erroneous. That decision should be set aside in its entirety.

CONCLUSION

For the above reasons, this court should reverse the judgment of the appellate court and affirm the judgment of the circuit court.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service and those matters to be appended to the brief under Rule 342(a), is 15 pages.

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Nos. 127527 & 127594 (cons.)

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JOHN O'CONNELL,

Plaintiff-Appellee,

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2021 IL App (1st) 201031

FIFTH DIVISION
June 30, 2021

No. 1-20-1031

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JOHN O'CONNELL,

Plaintiff-Appellant,

v.

THE COUNTY OF COOK and THE BOARD OF
TRUSTEES OF THE COUNTY EMPLOYEES' AND
OFFICERS' ANNUITY AND BENEFIT FUND OF
COOK COUNTY,

Defendants-Appellees.

) Appeal from the Circuit Court
) of Cook County.

) No. 20 CH 288

) Honorable Neil H. Cohen,
Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court, with opinion.
Justices Hoffman and Rochford concurred in the judgment and opinion.

OPINION

¶ 1

BACKGROUND

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¶ 2 John O’Connell, a longtime Cook County employee, developed multiple sclerosis and obtained ordinary disability benefits (disability benefits)¹ from defendant-appellant Board of Trustees of the County Employees’ and Officers’ Annuity and Benefit Fund of Cook County (pension board). While he was receiving disability benefits, Cook County terminated him from employment because he was unable to provide a physician’s certification providing a return-to-work date. Put simply, Cook County fired him solely because he was unable to return to work because of his disabilities from multiple sclerosis. Shortly thereafter, the pension board terminated his disability benefits, and the county stopped making contributions on his behalf to the County Employees’ and Officers’ Annuity and Benefit Fund (pension fund). O’Connell filed a multicount complaint against both the county and the pension board, seeking reinstatement of his disability benefits and the continuation of contributions to the pension fund under various theories of relief. The circuit court dismissed the entire complaint with prejudice. O’Connell appeals only the dismissal of counts I, III, and V of his complaint. We reverse.

¶ 3 FACTS

¶ 4 The following recitation of facts is taken from the pleadings and exhibits of record. In 1999, O’Connell began working for Cook County and became a participant in the pension fund. The county deducted a portion of O’Connell’s salary each month and transmitted those monies to the pension fund as his employee contribution. O’Connell was diagnosed with multiple sclerosis in 2001 but was still able to work, with accommodations, until 2016. In January 2017, he applied to the pension board for disability benefits, and the board granted his application. As required by

¹The Illinois Pension Code (Code) distinguishes between “duty” disability benefits payable to Cook County employees who are injured in the course of their employment (40 ILCS 5/9-156 (West 2018)) and “ordinary” disability benefits payable to those, such as O’Connell, whose disability is not work-related (*id.* § 9-157). For ease of expression, this opinion will refer to O’Connell’s benefits simply as “disability benefits.”

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section 9-158 of the Code (40 ILCS 5/9-158 (West 2018)), he reapplied for those benefits from time to time by submitting proof of his continued disability, and the pension board approved those applications. The last time this occurred was May 2, 2019, when the pension board approved his disability benefits for a period ending November 30, 2019. During this period, the county itself also made contributions to the pension fund on O’Connell’s behalf as required by sections 9-157 and 9-181 of the Code (*id.* §§ 9-157, 9-181).

¶ 5 On May 16, 2019, Cook County sent O’Connell a letter requiring him to submit medical documentation with an expected return-to-work date by May 29, 2019. If he failed to do so, the letter warned, he would be fired. The pension board then told him that, if he were fired, his disability benefits would stop. O’Connell responded, stating that he was still medically unable to return to work.

¶ 6 The county terminated O’Connell from employment on July 1, 2019. The termination letter left no doubt as to the reason. It stated: “The Bureau of Human Resources has not received medical documentation indicating a projected return to work date. Nor has the Bureau of Human Resources received an authorization returning you to work with or without a reasonable accommodation. You have been separated from your position effective July 1, 2019.” At that point, the county also stopped making contributions on his behalf to the pension fund, as it had been doing all along during his disability.

¶ 7 The pension board then terminated O’Connell’s disability benefits without providing any hearing, on the stated basis that he was no longer a county employee. Because the county terminated O’Connell’s employment before he reached the end of his disability benefit eligibility period, he also lost his ability to keep earning sufficient credits to maximize his retirement benefits by invoking a “credit purchase option” or “early annuity option” as provided by sections 9-174

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and 9-160 of the Code (*id.* §§ 9-174, 9-160), respectively, for individuals whose disability benefit eligibility period had expired. O’Connell demanded that the pension board continue his disability benefits, but the pension board did not respond.

¶ 8 On January 9, 2020, O’Connell filed a five-count complaint against the county and the pension board. The three counts relevant to this appeal are counts I, III, and V. Count I sought a declaratory judgment that O’Connell was entitled to continued disability benefits, on the theory that an employee who begins receiving disability benefit payments while still employed may continue receiving those benefits even if he is terminated from employment, if he is still disabled. It also alleged that, because of O’Connell’s termination from employment, the county improperly stopped making contributions to the pension fund on his behalf. The prayer for relief in count I explicitly sought a declaration that O’Connell’s disability benefits were improperly terminated, and it requested an order requiring the pension fund to pay him retroactive disability benefit payments. The prayer for relief did not, however, explicitly request retroactive reinstatement of the county’s contributions. However, one remedy necessarily follows from the other. Reading the allegations in count I as a whole and in context, it is clear that O’Connell was seeking relief in that count for retroactive reinstatement of the county’s contributions, both on a declaratory and injunctive basis. Therefore, we deem such relief as encompassed by the portion of the prayer for relief that sought “such further relief as the Court deems just and proper.” Count III sought relief in *mandamus* on the same theory but added a specific request for relief against the county to retroactively “reinstate all contributions” to the pension fund. Count V was pleaded only against the pension board. It alleged a violation of the due process clause of the fourteenth amendment to the United States Constitution (U.S. Const., amend. XIV) (as applied to the States) and federal

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civil rights laws, based on the pension board's termination of O'Connell's disability benefit payments without a notice or hearing.

¶ 9 Both defendants filed a combined motion to dismiss the complaint pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2018)). After briefing, the circuit court granted the motions and dismissed the complaint with prejudice.

¶ 10 The circuit court's memorandum and order first addressed Cook County's motion to dismiss. The court dismissed count I as to Cook County pursuant to section 2-615. *Id.* § 2-615. That count sought a declaration against Cook County that O'Connell was entitled to receive disability benefits, and as we have explained above, it also sought a declaration that he was entitled to county contributions during his period of disability. The circuit court found that Cook County had no authority to determine pension eligibility or to distribute pensions. In dismissing count I as to the county, the circuit court did not address the portion of count I relating to county contributions. The court dismissed count III pursuant to section 2-619. *Id.* § 2-619. It reasoned that O'Connell had no "protectable interest under either statute or common law which was injured by the termination of his employment and the cessation of the County's contributions to the Pension Fund". Therefore, he lacked standing to seek *mandamus* relief. It also dismissed count III pursuant to section 2-615 because O'Connell failed to allege facts demonstrating he had a right to continued employment by Cook County. Count V was not pleaded against Cook County.

¶ 11 As to the pension board, the circuit court dismissed counts I and III pursuant to section 2-619 on the basis that a former employee was not entitled to receive disability benefits under the Code. It also dismissed counts I and III pursuant to section 2-615 because, based on its interpretation of the Code, O'Connell had no legal tangible interest in continuing disability payments. The court dismissed count V pursuant to section 2-615 because, if O'Connell had no

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protectable interest in continued employment with the county, he had no procedural due process rights that the board could have violated. The court dismissed these counts with prejudice as to both defendants. It also dismissed counts II and IV with prejudice as to both defendants. This appeal followed.

¶ 12

ANALYSIS

¶ 13 On appeal, O’Connell contends that the circuit court erred in dismissing counts I, III, and V. He offers no arguments regarding the dismissal of counts II and IV.

¶ 14 Section 2-619.1 of the Code of Civil Procedure (*id.* § 2-619.1) permits a defendant to file a combined motion to dismiss pursuant to sections 2-615 and 2-619 of that Code. “A section 2-615 motion to dismiss [citation] challenges the legal sufficiency of a complaint based on defects apparent on its face.” *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). “In reviewing the sufficiency of a complaint, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts,” and we “construe the allegations in the complaint in the light most favorable to the plaintiff.” *Id.* (citing *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96-97 (2004)). Illinois is a fact-pleading jurisdiction, and a plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action. *Id.* at 429-30. However, “a cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery.” *Id.* at 429. We review an order granting or denying a section 2-615 motion *de novo*. *Id.*

¶ 15 We review denial of a section 2-619 motion to dismiss *de novo*. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). Section 2-619(a)(9) allows dismissal if “the claim asserted against defendant is barred by other affirmative matter.” 735 ILCS 5/2-619(a)(9) (West 2018). When ruling on a motion to dismiss under section 2-619, a court must accept all well-pleaded facts in the complaint

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as true and draw all reasonable inferences from those facts in favor of the nonmoving party. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24. As a result, a court should not grant a motion to dismiss unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Id.*

¶ 16 Our analysis begins with the operative statutes. Article 9 of the Code (40 ILCS 5/9-101 *et seq.* (West 2018)) establishes a pension system for Cook County employees. Several sections in article 9 of the Code are relevant to this appeal. Section 9-108 of the Code defines “employee” as “[a]ny employee of the county employed in any position in the classified civil service of the county.” *Id.* § 9-108.

¶ 17 Section 9-157 of the Code is the key section regarding “ordinary” disability benefits such as those that O’Connell had received. The section is quite lengthy, so we only set out the clauses relevant to this appeal. The main provision regarding eligibility for disability benefits states:

“An employee *** regardless of age on or after January 1, 1987, who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof.” *Id.* § 9-157.

The disability benefit is “50% of the employee’s salary at the date of disability.” *Id.*

¶ 18 Section 9-157 elsewhere refers to an individual as an “employee” even though that person has been receiving ordinary disability payments for some time and is therefore *no longer working* as a county employee. For example, in the text listing five triggering events that require termination of disability benefits, the person receiving benefits is referred to as an employee. This provision states that a disability benefit:

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“shall cease when the first of the following dates shall occur and *the employee*, if still disabled, shall thereafter be entitled to such annuity as is otherwise provided in this Article:

- (a) the date disability ceases.
- (b) the date the disabled *employee* attains age 65 for disability commencing prior to January 1, 1979.
- (c) the date the disabled *employee* attains 65 for disability commencing prior to attainment of age 60 in the service and after January 1, 1979.
- (d) the date the disabled *employee* attains the age of 70 for disability commencing after attainment of age 60 in the service and after January 1, 1979.
- (e) the date the payments of the benefit shall exceed in the aggregate, throughout the *employee's* service, a period equal to $\frac{1}{4}$ of the total service rendered prior to the date of disability but in no event more than 5 years. In computing such total service any period during which the *employee* received ordinary disability benefit and any period of absence from duty other than paid vacation shall be excluded.” (Emphases added.) *Id.*

¶ 19 Section 9-159 of the Code also lists three additional triggering events, in addition to the five events listed in section 9-157, that require that disability benefits be terminated. They are, in summary: (a) refusal to submit to a medical examination ordered by the pension board, (b) working for a tax-supported employer, and (c) receipt of workers’ compensation benefits. *Id.* § 9-159.

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¶ 20 Section 9-157(e) delineates a “years of service credits” option and limits the length of time an employee may receive ordinary disability benefits based on the length of time the employee worked in regular service. It is undisputed that, at the time O’Connell was terminated, he was entitled to receive disability benefits until August 2021, based on his years of service credits, which would have been about 4½ years after he left active service and began receiving disability benefits. As noted above, the pension board’s decision to stop his disability payments at the time of his termination on July 1, 2019, left a two-year gap between his termination and the exhaustion of his disability benefit period.

¶ 21 Other clauses in section 9-157 address Cook County’s obligation to continue making certain payments to the pension fund on behalf of disabled employees. These payments include a certain amount made through a payroll deduction from nondisabled employees’ salaries (the employee contribution) and an additional amount (the employer contribution), which Cook County makes from its own funds. O’Connell relies on these clauses as the basis for his claims against Cook County. The clauses provide that

“[i]nstead of all amounts ordinarily contributed by an employee *** the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is deemed for annuity and refund purposes *** contributed by him. The county shall also contribute ½ of 1% salary deductions required as a contribution from the employee under Section 9-133.” *Id.* § 9-157.

Similarly, section 9-181 of the Code requires the county to “contribute all amounts ordinarily contributed by it for annuity purposes” for an employee receiving ordinary disability benefits “as though he were in active discharge of his duties during such period of disability.” *Id.* § 9-181.

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¶ 22 Two other sections of article 9 establish mechanisms for disabled employees to convert their disability pensions into retirement pensions once their disability eligibility period has expired.

Section 9-160 of the Code, the “early annuity option,” provides that

“[a]n employee whose disability continues after he has received ordinary disability benefit *for the maximum period* *** prescribed by this Article, and who withdraws before age 60 while still so disabled, is entitled to receive the annuity provided from the total sum accumulated to his credit from employee contributions and county contributions to be computed as of his age on the date of withdrawal.” (Emphasis added.) *Id.* § 9-160.

Section 9-174, the “credit purchase option,” also provides that disabled employees whose credit for ordinary benefit purposes has expired and who continue to be disabled have the right to continue contributing to the pension fund at the “current contribution rate” for a period not to exceed 12 months and to receive annuity credit for those periods so paid. *Id.* § 9-174. These sections illustrate that, under most circumstances, a permanently disabled employee may enjoy an uninterrupted flow of benefits from the time of disability until conversion to a disability pension or the employee’s death. As noted above, the board halted O’Connell’s benefits when the county terminated him, before his disability benefit period expired and thus before he was able to qualify for either the early annuity option or credit purchase option.

¶ 23 This case presents a question of statutory interpretation. Two principles guide us. First, we follow the cardinal rule of statutory construction, which is to ascertain and give effect to the legislature’s intent, and the plain language of the statute is the best indication of that intent. *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 37-38 (2009). “The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning.” *Roselle*

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Police Pension Board v. Village of Roselle, 232 Ill. 2d 546, 552 (2009). “The statute should be evaluated as a whole, with each provision construed in connection with every other section.” *Id.* If the statutory language at issue is clear and unambiguous, a reviewing court must interpret the statute according to its terms without resorting to aids of statutory construction. *Branson v. Department of Revenue*, 168 Ill. 2d 247, 254 (1995). Second, when there “ ‘is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner.’ ” *Kanerva v. Weems*, 2014 IL 115811, ¶ 36 (quoting *Prazen v. Shoop*, 2013 IL 115035, ¶ 39); accord *Carmichael v. Laborers’ & Retirement Board Employees’ Annuity & Benefit Fund*, 2018 IL 122793, ¶ 24.

¶ 24 The parties’ arguments center on the temporal meaning of the word “employee” in section 9-157 and “employed” in section 9-108. O’Connell contends that section 9-157 does not require that the “employee *** who becomes disabled” continue to be an employee to receive disability benefits as long as the employee began receiving those benefits when he was an active employee. The defendants disagree, arguing that, under its common and ordinary meaning, the term “employed” plainly refers only to nonterminated employees. We disagree with the defendants. Applying the canons of liberal construction and the beneficial nature of pension laws, we find that the term “employed” is broad enough to encompass persons such as O’Connell who began receiving disability benefits when they were actively working. Nothing in the operative language suggests that the disabled employee must continue to be employed to remain eligible for disability benefits or for the county to be required to continue making contributions.

¶ 25 Even if we were to assume the terms “employed” or “employee” are ambiguous, the rules of statutory interpretation lead us to the same result.

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¶ 26 We first examine article 9's specific enumeration of eight events that trigger termination of disability benefits. Since O'Connell's termination is not one of the eight listed triggering events under the Code, we may presume that the legislature did not intend to include termination as a triggering event under some other guise. When determining whether a listing in a statute is exclusive, courts use the rule of statutory construction known as *expressio unius est exclusio alterius*. The rule "is based on logic and common sense. It expresses the learning of common experience that when people say one thing they do not mean something else. The maxim is closely related to the plain language rule in that it emphasizes the statutory language as it is written." *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 152 (1997) (citing 2A Norman J. Singer, *Statutes and Statutory Construction* §§ 47.24, 47.25, at 228, 234 (5th ed.1992)). Simply put, "[w]here a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words of limitation." *Burke v. 12 Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 442 (1992) (citing *Department of Corrections v. Illinois Civil Service Comm'n*, 187 Ill. App. 3d 304, 310 (1989)). Applying this rule supports O'Connell's position.

¶ 27 It is also axiomatic that courts must construe statutes to avoid absurd results. *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 70. The purpose of the Illinois pension laws is beneficial. *Kozak v. Retirement Board of Firemen's Annuity & Benefit Fund*, 95 Ill. 2d 211, 217 (1983) (citing *Colton v. Board of Trustees of the Firemen's Pension Fund*, 287 Ill. 56, 61 (1919)). The provisions cited above demonstrate a legislative intent to provide at least several years of benefits to disabled employees to ensure they have some income during their disability and to continue those benefits without a gap onwards into their retirement years, if need be. Under defendants' interpretation, the beneficial purposes of the disability provisions of article 9 would

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be thwarted. The county could simply fire severely disabled employees even after a brief period of disability, thus saving the cost of its required contributions to the pension fund, and the pension board, in turn, would be able to terminate the employees' disability benefits. We therefore find that defendants' interpretation, that disability benefits end when an employee is terminated, leads inexorably to an absurd result and would undermine the beneficial purpose of the pension laws.

¶ 28 Our reading of the pertinent statutory provisions is also supported by the doctrine of *noscitur a sociis* ("a word is known by its companions"). As explained above, we do not find the statute ambiguous. But even if it were, this tool allows us to ascertain the meaning of an ambiguous statute by relating them to words or phrases associated with them in the statutory context. *Puritan Finance Corp. v. Bechstein Construction Corp.*, 2012 IL App (1st) 112261, ¶ 13. Article 9 often uses the term "employee" to refer to an individual who is receiving disability benefits. For example, section 9-135.1 (40 ILCS 5/9-135.1 (West 2018)) refers to a death benefit payable to "an employee in service or while receiving a retirement annuity". Section 9-161 (*id.* § 9-161) explains the calculation of annuities for an "employee who has withdrawn from service" then reenters service.

¶ 29 We conclude that, under the Code, O'Connell was entitled to disability benefits and continued county contributions to the pension fund because he was employed at the time of his application for disability benefits. We further find that his termination was not a triggering event causing the cessation of his disability benefits and county contributions to the pension fund. We now examine the circuit court's disposition of the various counts of the complaint in light of those findings. Only counts I, III, and V are at issue in this appeal. We again note that, since this appeal comes to us on dismissal pursuant to sections 2-615 and 2-619, we construe the allegations in the complaint as true.

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¶ 30 The circuit court’s dismissal of those counts was based entirely on its determination that O’Connell was no longer eligible for disability benefits and county contributions to the pension fund after the county terminated him. However, while the county may choose to terminate an employee who validly receives ordinary disability benefits, the pension board may not terminate the ordinary disability benefits solely because of that termination from employment, and the county may not refuse to make the required contributions to the pension fund in that instance. O’Connell seeks relief against the pension board for ordinary disability payments that would have been paid after his termination, relief against the county for contributions it should have made to the pension fund during the same period, and relief in that the payments and contributions continue according to the Code.

¶ 31 The elements of a declaratory judgment action are “ ‘(1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests.’ ” *The Carle Foundation v. Cunningham Township*, 2017 IL 120427, ¶ 26 (quoting *Beahringer v. Page*, 204 Ill. 2d 363, 372 (2003)). Based on our interpretation, O’Connell has a tangible pecuniary interest in his disability benefits and county contributions to the pension fund. Accordingly, the circuit court should not have dismissed O’Connell’s declaratory judgment action.

¶ 32 Count III sought relief in the form of *mandamus* against both defendants. A valid complaint for *mandamus* “must allege facts which establish a clear right to the relief requested, a clear duty of the respondent to act, and clear authority in the respondent to comply with the writ.” *Noyola v. Board of Education of the City of Chicago*, 179 Ill. 2d 121, 133 (1997) (citing *Dennis E. v. O’Malley*, 256 Ill. App. 3d 334, 340-41 (1993)). Again, based on our interpretation of the Code, we find that the circuit court erred in dismissing count III. Following O’Connell’s termination,

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each defendant had particular duties with respect to him. The pension board had a clear duty to make disability benefit payments, and the county had a clear duty to make contributions to the pension fund on his behalf. In particular, we note that, under section 9-160, the county was required to pay contributions toward O’Connell’s early annuity option “for the maximum time prescribed by this Article,” which in O’Connell’s case was about 4½ years—not merely until the county terminated him from employment. See *supra* ¶ 20.

¶ 33 For the same reason, the circuit court should not have dismissed count III pursuant to section 2-619 on the basis of lack of standing. Standing is “some injury in fact to a legally recognized interest.” *Glazewski v. Coronet Insurance Co.*, 108 Ill. 2d 243, 254 (1985). The claimed injury must be distinct and palpable, fairly traceable to the defendant’s actions, and substantially likely to be prevented or redressed by the grant of the requested relief. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492-93 (1988). Since O’Connell had the right to continuation of his disability benefits and county contributions to the pension fund after his termination from employment, and the relief in count III would have made him whole for his losses, he had standing to bring his claim.

¶ 34 The circuit court dismissed count V, a due process claim against the board only, on the basis that O’Connell had no protectable right to a continuation of his disability benefits. However, because he did have such a protectable right, count V stated a valid cause of action for violation of his due process rights, and we reverse the dismissal of that count, as well. Taking the allegations of the complaint before us as true, we find that the circuit court erred in dismissing count V because that count stated a valid cause of action and was otherwise sufficient to survive a motion to dismiss. As this court explained in *Kosakowski v. Board of Trustees of the City of Calumet City Police Pension Fund*, 389 Ill. App. 3d 381, 387 (2009):

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“The receipt of a disability pension is a property right which cannot be diminished without procedural due process. [Citation.] The essence of procedural due process is meaningful notice and a meaningful opportunity to be heard. [Citation.] In this case, the Board afforded the plaintiff neither. Without notice and without a hearing, the Board unilaterally attempted to modify the disability pension which it had previously awarded to the plaintiff. As a matter of due process, the Board should have provided the plaintiff with notice and an opportunity to be heard before modifying his pension.” (Internal quotations marks omitted.)

¶ 35 This disposition renders it unnecessary for us to consider O’Connell’s arguments that the Illinois Constitution’s pension protection clause (Ill. Const. 1970, art. XIII, § 5) requires reversal. See *In re E.H.*, 224 Ill. 2d 172, 178 (2006) (“cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort”).

¶ 36 CONCLUSION

¶ 37 Accordingly, we reverse the judgment of the circuit court of Cook County dismissing counts I, III, and V of the complaint and remand for further proceedings consistent with this opinion. Because O’Connell has presented no arguments on appeal regarding the dismissal of counts II and IV, those counts remains dismissed pursuant to the circuit court’s order.

¶ 38 Reversed and remanded.

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No. 1-20-1031

Cite as: *O'Connell v. County of Cook*, 2021 IL App (2d) 201031

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 20-CH-288; the Hon. Neil H. Cohen, Judge, presiding.

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Vincent D. Pinelli and Sarah A. Boeckman, of Burke Burns & Pinelli, Ltd., of Chicago, for other appellee.

No. _____

IN THE SUPREME COURT OF ILLINOIS

John O'Connell,**Plaintiff-Respondent,****v.****Cook County and the Board
of Trustees of the County
Employees' and Officers' Annuity
And Benefit Fund of Cook County,****Defendants-Petitioner.**Petition for Leave to Appeal from
the Appellate Court of Illinois,
First Judicial District
No. 1-20-1031There Heard on Appeal from
The Circuit Court of Cook County,
No. 20-CH-288Honorable Neil H. Cohen,
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PRAYER FOR LEAVE TO APPEAL

Pursuant to Supreme Court Rule 315(a), defendant County of Cook (the “County” or “Cook County”) petitions for leave to appeal the First District Appellate Court (“First District”) decision in *O’Connell v. Cook County, et. al*, 2021 IL App (1st) 201031, attached here as A1-17.¹ Defendant County is seeking leave to appeal because the First District’s ruling expands both the plain language of the Pension Code and the contractual relationship between the employee, the County, and the Pension Board. Appeal is also necessary because the decision leads to the exact result that this Court previously ruled was absurd. *See Di Falco v. Wood Dale Firemen’s Fund*, 122 Ill. 2d 22, 31 (1988).

DATES OF DECISIONS BELOW

On September 14, 2020, the Circuit Court issued a decision dismissing the case pursuant to 735 ILCS 2-615 (“Section 2-615”) and 735 ILCS 2-619 (“Section 2-619”). (A18-27.) On June 30, 2021, the First District issued a decision reversing the Circuit Court’s decision, finding that former employees are entitled to receive ordinary disability benefits from the County Employees’ and Officers’ Annuity and Benefit Fund (“Pension Board”) and that the County is statutorily obligated to continue contributions to the Pension Board on behalf of former employees who are receiving ordinary disability benefits. (A1-17). Defendant Cook County did not file a petition for rehearing. Therefore, pursuant to Rule 315(a), this petition is timely filed.

POINTS RELIED UPON FOR REVIEW OF JUDGMENT OF THE APPELLATE COURT

Review is necessary because the First District’s decision cannot be reconciled with the plain unambiguous definition of employee created by the legislature in Article 9,

¹ The prefix “A. __” refers to corresponding pages of the Rule 315(e) Appendix submitted with this petition.

Section 108 of the Pension Code. The First District created a new statutory obligation upon the County by erroneously expanding the group of individuals for whom the County is required to make contributions to the Pension Fund to include former employees, both terminated County employees and those who voluntarily left, who are receiving ordinary disability benefits. Further, the decision created new contractual rights between former employees, who now are entitled to receive ordinary disability benefits post-employment, and their former employer.

Review is also urgently needed because the First District's decision leads to an absurd result of awarding employment benefits to terminated and former employees, which is the exact conclusion this Court already determined was improper. *See Di Falco*, 122 Ill. 2d at 31.

STATEMENT OF FACTS

I. Article 9 of the Pension Code

Article 9 of the Pension Code established the County Employees' and Officers' Annuity and Benefit Fund ("Pension Fund") and the Board of Trustees of the County Employees' and Officers' Annuity and Benefit Fund ("Pension Board"). *See* 40 ILCS 5/9-101 (2021); 40 ILCS 5/9-107 (2021) and 40 ILCS 5/9-185 (2021). Pursuant to the Pension Code, participants in the Pension Fund may be eligible for two types of disability benefits: (1) duty disability benefits for employees who become disabled because of an on-duty injury; and (2) ordinary disability benefits for employees who become disabled due to a cause other than an on-duty injury. (40 ILCS 5/9-156; 40 ILCS 5/9-157.)

The Pension Board— a legal entity that is wholly separate from the County— is statutorily authorized to carry out the provisions of the Pension Code and determine eli-

gibility for both types of disability benefits. (40 ILCS 5/9-185.) Section 9-108 of the Code defines “employee” as “[a]ny employee of the county employed in any position in the classified civil service of the county.” (40 ILCS 5/9-108.) Section 9-181 of the Code requires the County to “contribute all amounts ordinarily contributed by it for annuity purposes for any employee receiving ordinary disability benefit as though he were in active discharge of his duties during such period of disability.” (40 ILCS 5/9-181.)

II. Plaintiff’s Leave And Termination

In 2017, Plaintiff took a leave of absence and applied to the Pension Board to receive ordinary disability benefits. (A30, ¶7.) The Pension Board approved Plaintiff’s application for ordinary disability benefits. (*Id.*; A47) On July 1, 2019, the County terminated Plaintiff’s employment for failing to provide a return to work date in violation of the County’s leave policy. (A30, ¶8; Pl. A64) Plaintiff admitted that he could not provide a return to work date because he was unable to work. (A30, ¶8.) Subsequent to Plaintiff’s termination, the Pension Board ceased paying him ordinary disability benefits. (A30, ¶9.)

III. Plaintiff’s Lawsuit and Appeal

On January 9, 2020, Plaintiff filed suit in the Circuit Court seeking declaratory judgment and *mandamus* against the County and the Pension Board, alleging that the Pension Code and the Pension Protection Clause entitle Plaintiff to ordinary disability benefits even after the County terminated Plaintiff’s employment because of his inability to work. (A28-67.) On September 14, 2020, the Circuit Court dismissed Plaintiff’s complaint against both Defendants pursuant to Section 2-615 and Section 2-619. (A18-72).

On September 28, 2020, Plaintiff filed a notice of appeal. (A68-69) Plaintiff appealed the dismissal of the following counts against the County: (count I) declaratory judgment and other relief that continued employment is not required under the Illinois Pension Code for the continuation of disability benefits; and (count III) *mandamus* ordering that the Pension Board reinstate Plaintiff's disability benefits and the County reinstate contributions related to Plaintiff's disability benefits. (A70-103). On June 30, 2021, after briefing and a hearing, the First District reversed the Circuit Court's dismissal order. (A1-17). Therefore, Defendant County now respectfully petitions this Court for leave to appeal the First District's order pursuant to Supreme Court Rule 315.

ARGUMENT

This Court should exercise its authority under Rule 315 to grant review because requiring the County to pay pension contributions to a former employee is inconsistent with the plain meaning of Article 9 of the Pension Code. The First District's ruling creates impermissible legal scenarios. For example, including former employees under Article 9 changes and enlarges the Employee/County/Pension Board's contractual relationship, and also unjustly enriches employees after they have separated from employment by awarding them additional employment benefits. The First District re-wrote the statute in order to arrive at its decision. Therefore, this decision must be reviewed and reversed.

I. THE FIRST DISTRICT DOES NOT HAVE THE AUTHORITY TO EXPAND THE LEGISLATURE'S CLEAR DEFINITION OF "EMPLOYEE"

This Court should grant review to correct the First District's erroneous and wholly improper holding that the County is statutory obligated to pay pension benefits for former employees. (A10-12.)

The Illinois Constitution provides that membership in a pension system of any local government unit in the State is “an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.” Ill. Const. 1970, art. XIII, § 5.; *Di Falco*, 122 Ill. 2d at 26. County employees’ pension benefits, including their entitlement to ordinary disability, are detailed in Article 9 of the Code. Specifically, Article 9 provides ordinary disability benefits to “employee[s].” 40 ILCS 5/9-157. This employment benefit financially assists employees who have become disabled as the result of a non-duty injury until they can either return to work or apply for a retirement annuity. *See id.* Employee is defined in Article 9 as “[a]ny employee of the county *employed in any position* in the classified civil service of the county.” 40 ILCS 5/9-108 (emphasis added). Read together, the clear and unambiguous language of Article 9 states that ordinary disability benefits are only paid to employees in any position at Cook County. Similar to all employment benefits, ordinary disability is not paid by the Pension Board to former employees who have been terminated or left their position at the County, as they are not in an employment position at the County.

When permissible under the Constitution, statutes should be interpreted and applied in the manner in which they are written. *Kozak v. Retirement Board of Firemen’s Annuity & Ben. Fund*, 95 Ill. 2d 211, 220 (1983) citing *In re Griffin* 92 Ill. 2d 48, 52. (1982). They should not be rewritten by a court to make them consistent with the court’s idea of orderliness and public policy. *Id.*

The First District correctly found that the definition of employee was unambiguous, but then erroneously applied “canons of liberal construction” in expanding the definition of employee to include former employees, who are not in an employment position,

but who began receiving disability benefits when they were employed by the County. (A11). This broadened definition directly contradicts the plain language of the definition of employee. 40 ILCS 5/9-108.

Article 9 of the Pension Code requires the County to “contribute all amounts ordinarily contributed by it for annuity purposes for any *employee* receiving ordinary disability benefit as though he were in active discharge of his duties during such period of disability.” 40 ILCS 5/9-181 (emphasis added). The statute does not require the County to continue to make contributions to the fund for former employees simply for the purpose of allowing terminated employees or employees who have resigned to use a benefit that was not exhausted while employed.

Therefore, because former employees are not entitled to receive ordinary disability benefits, the County is not required to continue to pay for such benefits.

II. THE FIRST DISTRICT’S DECISION LEADS TO AN ABSURD RESULT THAT THIS COURT HAS ALREADY DETERMINED IS IMPROPER

The First District in holding that the County “had a clear duty to make contributions to the pension fund” on behalf of former employees, explained that “courts must construe statutes to avoid absurd results.” (A12.) The court expressed concern that “[t]he county could simply fire severely disabled employees even after a brief period of disability, thus saving the cost of its required contributions to the pension fund.” *Id.*

This Court addressed the same potential “absurd result” in *Di Falco v. Wood Dale Firemen’s Fund*, 122 Ill. 2d 22 (1988). In *Di Falco*, this Court held that under Article 4 of the Pension Code, discharged fire fighters are not entitled to collect disability benefits, which were designed to assist current employees unable to work and collect a salary. *Di Falco*, 122 Ill. 2d at 30. The plaintiff in *Di Falco* argued that not awarding disability

benefits will lead to employers discharging injured employees to avoid paying benefits. *Id.* at 31. However, this Court explained that the record was devoid of any such abuse, that there are safeguards in place to prevent such abuse, and that the possibility of abuse happening is extremely minimal, if not nonexistent. *Id.*

Here, in implicitly reversing the County's termination decision, of which the Plaintiff does not contest and therefore the court must assume was proper (*Di Falco*, 122 Ill. 2d at 25), the First District created the exact absurd result that *Di Falco* avoided. The First District's holding is contrary to the record in this case, which is devoid of any alleged employment mishandling, and requires the County to pay contributions to the Pension Fund on behalf of any former employee receiving ordinary disability benefits, even if the employee has been terminated or leaves employment. 40 ILCS 5/9-157. In either scenario, the First District determined that a person who is no longer employed continues to receive benefits.

The First District's decision would produce the following: An employee could resign after becoming eligible for disability benefits, with no intention of returning to work at the County, and still be entitled to ongoing benefits. The statute does not allow for this absurd result— for the County to continue contributing to the Pension Fund for former employees who because of leaving employment or due to termination, will never again “discharge...duties.” 40 ILCS 5/9-181.

CONCLUSION

For the foregoing reasons, this Court should grant leave to appeal and reverse the First District's decision.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 7 pages.

/s/ Rebecca M. Gest

Assistant State's Attorney

NOTICE OF FILING AND CERTIFICATE OF SERVICE

I, Assistant State's Attorney Rebecca M. Gest, an attorney, hereby certifies that on August 4, 2021, a true and correct copy of the **County of Cook's Petition for Leave to Appeal** was filed and served via Odyssey eFileIL, an approved electronic filing service provider, pursuant to Illinois Supreme Court Rule 11(c), upon the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that thirteen copies of the Petition bearing the court's file-stamp will be sent to the above court.

/s/ Rebecca M. Gest
 Rebecca M. Gest
 Assistant State's Attorney

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

/s/ Rebecca M. Gest
 Rebecca M. Gest
 Assistant State's Attorney

No. _____

IN THE SUPREME COURT OF ILLINOIS**John O'Connell,****Plaintiff-Respondent,****v.****Cook County and the Board
of Trustees of the County
Employees' and Officers' Annuity
And Benefit Fund of Cook County,****Defendants-Petitioner.**Petition for Leave to Appeal from
the Appellate Court of Illinois,
First Judicial District
No. 1-20-1031There Heard on Appeal from
The Circuit Court of Cook County,
No. 20-CH-288Honorable Neil H. Cohen,
Judge Presiding**TABLE OF CONTENTS OF APPENDIX**

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2021 IL App (1st) 201031

FIFTH DIVISION
June 30, 2021

No. 1-20-1031

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JOHN O'CONNELL,

Plaintiff-Appellant,

v.

THE COUNTY OF COOK and THE BOARD OF
TRUSTEES OF THE COUNTY EMPLOYEES' AND
OFFICERS' ANNUITY AND BENEFIT FUND OF
COOK COUNTY,

Defendants-Appellees.

) Appeal from the Circuit Court
) of Cook County.

) No. 20 CH 288

) Honorable Neil H. Cohen,
Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court, with opinion.
Justices Hoffman and Rochford concurred in the judgment and opinion.

OPINION

¶ 1

BACKGROUND

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¶ 2 John O’Connell, a longtime Cook County employee, developed multiple sclerosis and obtained ordinary disability benefits (disability benefits)¹ from defendant-appellant Board of Trustees of the County Employees’ and Officers’ Annuity and Benefit Fund of Cook County (pension board). While he was receiving disability benefits, Cook County terminated him from employment because he was unable to provide a physician’s certification providing a return-to-work date. Put simply, Cook County fired him solely because he was unable to return to work because of his disabilities from multiple sclerosis. Shortly thereafter, the pension board terminated his disability benefits, and the county stopped making contributions on his behalf to the County Employees’ and Officers’ Annuity and Benefit Fund (pension fund). O’Connell filed a multicount complaint against both the county and the pension board, seeking reinstatement of his disability benefits and the continuation of contributions to the pension fund under various theories of relief. The circuit court dismissed the entire complaint with prejudice. O’Connell appeals only the dismissal of counts I, III, and V of his complaint. We reverse.

¶ 3 FACTS

¶ 4 The following recitation of facts is taken from the pleadings and exhibits of record. In 1999, O’Connell began working for Cook County and became a participant in the pension fund. The county deducted a portion of O’Connell’s salary each month and transmitted those monies to the pension fund as his employee contribution. O’Connell was diagnosed with multiple sclerosis in 2001 but was still able to work, with accommodations, until 2016. In January 2017, he applied to the pension board for disability benefits, and the board granted his application. As required by

¹The Illinois Pension Code (Code) distinguishes between “duty” disability benefits payable to Cook County employees who are injured in the course of their employment (40 ILCS 5/9-156 (West 2018)) and “ordinary” disability benefits payable to those, such as O’Connell, whose disability is not work-related (*id.* § 9-157). For ease of expression, this opinion will refer to O’Connell’s benefits simply as “disability benefits.”

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section 9-158 of the Code (40 ILCS 5/9-158 (West 2018)), he reapplied for those benefits from time to time by submitting proof of his continued disability, and the pension board approved those applications. The last time this occurred was May 2, 2019, when the pension board approved his disability benefits for a period ending November 30, 2019. During this period, the county itself also made contributions to the pension fund on O’Connell’s behalf as required by sections 9-157 and 9-181 of the Code (*id.* §§ 9-157, 9-181).

¶ 5 On May 16, 2019, Cook County sent O’Connell a letter requiring him to submit medical documentation with an expected return-to-work date by May 29, 2019. If he failed to do so, the letter warned, he would be fired. The pension board then told him that, if he were fired, his disability benefits would stop. O’Connell responded, stating that he was still medically unable to return to work.

¶ 6 The county terminated O’Connell from employment on July 1, 2019. The termination letter left no doubt as to the reason. It stated: “The Bureau of Human Resources has not received medical documentation indicating a projected return to work date. Nor has the Bureau of Human Resources received an authorization returning you to work with or without a reasonable accommodation. You have been separated from your position effective July 1, 2019.” At that point, the county also stopped making contributions on his behalf to the pension fund, as it had been doing all along during his disability.

¶ 7 The pension board then terminated O’Connell’s disability benefits without providing any hearing, on the stated basis that he was no longer a county employee. Because the county terminated O’Connell’s employment before he reached the end of his disability benefit eligibility period, he also lost his ability to keep earning sufficient credits to maximize his retirement benefits by invoking a “credit purchase option” or “early annuity option” as provided by sections 9-174

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and 9-160 of the Code (*id.* §§ 9-174, 9-160), respectively, for individuals whose disability benefit eligibility period had expired. O’Connell demanded that the pension board continue his disability benefits, but the pension board did not respond.

¶ 8 On January 9, 2020, O’Connell filed a five-count complaint against the county and the pension board. The three counts relevant to this appeal are counts I, III, and V. Count I sought a declaratory judgment that O’Connell was entitled to continued disability benefits, on the theory that an employee who begins receiving disability benefit payments while still employed may continue receiving those benefits even if he is terminated from employment, if he is still disabled. It also alleged that, because of O’Connell’s termination from employment, the county improperly stopped making contributions to the pension fund on his behalf. The prayer for relief in count I explicitly sought a declaration that O’Connell’s disability benefits were improperly terminated, and it requested an order requiring the pension fund to pay him retroactive disability benefit payments. The prayer for relief did not, however, explicitly request retroactive reinstatement of the county’s contributions. However, one remedy necessarily follows from the other. Reading the allegations in count I as a whole and in context, it is clear that O’Connell was seeking relief in that count for retroactive reinstatement of the county’s contributions, both on a declaratory and injunctive basis. Therefore, we deem such relief as encompassed by the portion of the prayer for relief that sought “such further relief as the Court deems just and proper.” Count III sought relief in *mandamus* on the same theory but added a specific request for relief against the county to retroactively “reinstate all contributions” to the pension fund. Count V was pleaded only against the pension board. It alleged a violation of the due process clause of the fourteenth amendment to the United States Constitution (U.S. Const., amend. XIV) (as applied to the States) and federal

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civil rights laws, based on the pension board's termination of O'Connell's disability benefit payments without a notice or hearing.

¶ 9 Both defendants filed a combined motion to dismiss the complaint pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2018)). After briefing, the circuit court granted the motions and dismissed the complaint with prejudice.

¶ 10 The circuit court's memorandum and order first addressed Cook County's motion to dismiss. The court dismissed count I as to Cook County pursuant to section 2-615. *Id.* § 2-615. That count sought a declaration against Cook County that O'Connell was entitled to receive disability benefits, and as we have explained above, it also sought a declaration that he was entitled to county contributions during his period of disability. The circuit court found that Cook County had no authority to determine pension eligibility or to distribute pensions. In dismissing count I as to the county, the circuit court did not address the portion of count I relating to county contributions. The court dismissed count III pursuant to section 2-619. *Id.* § 2-619. It reasoned that O'Connell had no "protectable interest under either statute or common law which was injured by the termination of his employment and the cessation of the County's contributions to the Pension Fund". Therefore, he lacked standing to seek *mandamus* relief. It also dismissed count III pursuant to section 2-615 because O'Connell failed to allege facts demonstrating he had a right to continued employment by Cook County. Count V was not pleaded against Cook County.

¶ 11 As to the pension board, the circuit court dismissed counts I and III pursuant to section 2-619 on the basis that a former employee was not entitled to receive disability benefits under the Code. It also dismissed counts I and III pursuant to section 2-615 because, based on its interpretation of the Code, O'Connell had no legal tangible interest in continuing disability payments. The court dismissed count V pursuant to section 2-615 because, if O'Connell had no

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protectable interest in continued employment with the county, he had no procedural due process rights that the board could have violated. The court dismissed these counts with prejudice as to both defendants. It also dismissed counts II and IV with prejudice as to both defendants. This appeal followed.

¶ 12

ANALYSIS

¶ 13 On appeal, O’Connell contends that the circuit court erred in dismissing counts I, III, and V. He offers no arguments regarding the dismissal of counts II and IV.

¶ 14 Section 2-619.1 of the Code of Civil Procedure (*id.* § 2-619.1) permits a defendant to file a combined motion to dismiss pursuant to sections 2-615 and 2-619 of that Code. “A section 2-615 motion to dismiss [citation] challenges the legal sufficiency of a complaint based on defects apparent on its face.” *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). “In reviewing the sufficiency of a complaint, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts,” and we “construe the allegations in the complaint in the light most favorable to the plaintiff.” *Id.* (citing *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96-97 (2004)). Illinois is a fact-pleading jurisdiction, and a plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action. *Id.* at 429-30. However, “a cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery.” *Id.* at 429. We review an order granting or denying a section 2-615 motion *de novo*. *Id.*

¶ 15 We review denial of a section 2-619 motion to dismiss *de novo*. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). Section 2-619(a)(9) allows dismissal if “the claim asserted against defendant is barred by other affirmative matter.” 735 ILCS 5/2-619(a)(9) (West 2018). When ruling on a motion to dismiss under section 2-619, a court must accept all well-pleaded facts in the complaint

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as true and draw all reasonable inferences from those facts in favor of the nonmoving party. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24. As a result, a court should not grant a motion to dismiss unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Id.*

¶ 16 Our analysis begins with the operative statutes. Article 9 of the Code (40 ILCS 5/9-101 *et seq.* (West 2018)) establishes a pension system for Cook County employees. Several sections in article 9 of the Code are relevant to this appeal. Section 9-108 of the Code defines “employee” as “[a]ny employee of the county employed in any position in the classified civil service of the county.” *Id.* § 9-108.

¶ 17 Section 9-157 of the Code is the key section regarding “ordinary” disability benefits such as those that O’Connell had received. The section is quite lengthy, so we only set out the clauses relevant to this appeal. The main provision regarding eligibility for disability benefits states:

“An employee *** regardless of age on or after January 1, 1987, who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof.” *Id.* § 9-157.

The disability benefit is “50% of the employee’s salary at the date of disability.” *Id.*

¶ 18 Section 9-157 elsewhere refers to an individual as an “employee” even though that person has been receiving ordinary disability payments for some time and is therefore *no longer working* as a county employee. For example, in the text listing five triggering events that require termination of disability benefits, the person receiving benefits is referred to as an employee. This provision states that a disability benefit:

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“shall cease when the first of the following dates shall occur and *the employee*, if still disabled, shall thereafter be entitled to such annuity as is otherwise provided in this Article:

- (a) the date disability ceases.
- (b) the date the disabled *employee* attains age 65 for disability commencing prior to January 1, 1979.
- (c) the date the disabled *employee* attains 65 for disability commencing prior to attainment of age 60 in the service and after January 1, 1979.
- (d) the date the disabled *employee* attains the age of 70 for disability commencing after attainment of age 60 in the service and after January 1, 1979.
- (e) the date the payments of the benefit shall exceed in the aggregate, throughout the *employee's* service, a period equal to $\frac{1}{4}$ of the total service rendered prior to the date of disability but in no event more than 5 years. In computing such total service any period during which the *employee* received ordinary disability benefit and any period of absence from duty other than paid vacation shall be excluded.” (Emphases added.) *Id.*

¶ 19 Section 9-159 of the Code also lists three additional triggering events, in addition to the five events listed in section 9-157, that require that disability benefits be terminated. They are, in summary: (a) refusal to submit to a medical examination ordered by the pension board, (b) working for a tax-supported employer, and (c) receipt of workers’ compensation benefits. *Id.* § 9-159.

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¶ 20 Section 9-157(e) delineates a “years of service credits” option and limits the length of time an employee may receive ordinary disability benefits based on the length of time the employee worked in regular service. It is undisputed that, at the time O’Connell was terminated, he was entitled to receive disability benefits until August 2021, based on his years of service credits, which would have been about 4½ years after he left active service and began receiving disability benefits. As noted above, the pension board’s decision to stop his disability payments at the time of his termination on July 1, 2019, left a two-year gap between his termination and the exhaustion of his disability benefit period.

¶ 21 Other clauses in section 9-157 address Cook County’s obligation to continue making certain payments to the pension fund on behalf of disabled employees. These payments include a certain amount made through a payroll deduction from nondisabled employees’ salaries (the employee contribution) and an additional amount (the employer contribution), which Cook County makes from its own funds. O’Connell relies on these clauses as the basis for his claims against Cook County. The clauses provide that

“[i]nstead of all amounts ordinarily contributed by an employee *** the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is deemed for annuity and refund purposes *** contributed by him. The county shall also contribute ½ of 1% salary deductions required as a contribution from the employee under Section 9-133.” *Id.* § 9-157.

Similarly, section 9-181 of the Code requires the county to “contribute all amounts ordinarily contributed by it for annuity purposes” for an employee receiving ordinary disability benefits “as though he were in active discharge of his duties during such period of disability.” *Id.* § 9-181.

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¶ 22 Two other sections of article 9 establish mechanisms for disabled employees to convert their disability pensions into retirement pensions once their disability eligibility period has expired.

Section 9-160 of the Code, the “early annuity option,” provides that

“[a]n employee whose disability continues after he has received ordinary disability benefit *for the maximum period* *** prescribed by this Article, and who withdraws before age 60 while still so disabled, is entitled to receive the annuity provided from the total sum accumulated to his credit from employee contributions and county contributions to be computed as of his age on the date of withdrawal.” (Emphasis added.) *Id.* § 9-160.

Section 9-174, the “credit purchase option,” also provides that disabled employees whose credit for ordinary benefit purposes has expired and who continue to be disabled have the right to continue contributing to the pension fund at the “current contribution rate” for a period not to exceed 12 months and to receive annuity credit for those periods so paid. *Id.* § 9-174. These sections illustrate that, under most circumstances, a permanently disabled employee may enjoy an uninterrupted flow of benefits from the time of disability until conversion to a disability pension or the employee’s death. As noted above, the board halted O’Connell’s benefits when the county terminated him, before his disability benefit period expired and thus before he was able to qualify for either the early annuity option or credit purchase option.

¶ 23 This case presents a question of statutory interpretation. Two principles guide us. First, we follow the cardinal rule of statutory construction, which is to ascertain and give effect to the legislature’s intent, and the plain language of the statute is the best indication of that intent. *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 37-38 (2009). “The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning.” *Roselle*

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Police Pension Board v. Village of Roselle, 232 Ill. 2d 546, 552 (2009). “The statute should be evaluated as a whole, with each provision construed in connection with every other section.” *Id.* If the statutory language at issue is clear and unambiguous, a reviewing court must interpret the statute according to its terms without resorting to aids of statutory construction. *Branson v. Department of Revenue*, 168 Ill. 2d 247, 254 (1995). Second, when there “ ‘is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner.’ ” *Kanerva v. Weems*, 2014 IL 115811, ¶ 36 (quoting *Prazen v. Shoop*, 2013 IL 115035, ¶ 39); accord *Carmichael v. Laborers’ & Retirement Board Employees’ Annuity & Benefit Fund*, 2018 IL 122793, ¶ 24.

¶ 24 The parties’ arguments center on the temporal meaning of the word “employee” in section 9-157 and “employed” in section 9-108. O’Connell contends that section 9-157 does not require that the “employee *** who becomes disabled” continue to be an employee to receive disability benefits as long as the employee began receiving those benefits when he was an active employee. The defendants disagree, arguing that, under its common and ordinary meaning, the term “employed” plainly refers only to nonterminated employees. We disagree with the defendants. Applying the canons of liberal construction and the beneficial nature of pension laws, we find that the term “employed” is broad enough to encompass persons such as O’Connell who began receiving disability benefits when they were actively working. Nothing in the operative language suggests that the disabled employee must continue to be employed to remain eligible for disability benefits or for the county to be required to continue making contributions.

¶ 25 Even if we were to assume the terms “employed” or “employee” are ambiguous, the rules of statutory interpretation lead us to the same result.

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¶ 26 We first examine article 9's specific enumeration of eight events that trigger termination of disability benefits. Since O'Connell's termination is not one of the eight listed triggering events under the Code, we may presume that the legislature did not intend to include termination as a triggering event under some other guise. When determining whether a listing in a statute is exclusive, courts use the rule of statutory construction known as *expressio unius est exclusio alterius*. The rule "is based on logic and common sense. It expresses the learning of common experience that when people say one thing they do not mean something else. The maxim is closely related to the plain language rule in that it emphasizes the statutory language as it is written." *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 152 (1997) (citing 2A Norman J. Singer, *Statutes and Statutory Construction* §§ 47.24, 47.25, at 228, 234 (5th ed.1992)). Simply put, "[w]here a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words of limitation." *Burke v. 12 Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 442 (1992) (citing *Department of Corrections v. Illinois Civil Service Comm'n*, 187 Ill. App. 3d 304, 310 (1989)). Applying this rule supports O'Connell's position.

¶ 27 It is also axiomatic that courts must construe statutes to avoid absurd results. *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 70. The purpose of the Illinois pension laws is beneficial. *Kozak v. Retirement Board of Firemen's Annuity & Benefit Fund*, 95 Ill. 2d 211, 217 (1983) (citing *Colton v. Board of Trustees of the Firemen's Pension Fund*, 287 Ill. 56, 61 (1919)). The provisions cited above demonstrate a legislative intent to provide at least several years of benefits to disabled employees to ensure they have some income during their disability and to continue those benefits without a gap onwards into their retirement years, if need be. Under defendants' interpretation, the beneficial purposes of the disability provisions of article 9 would

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be thwarted. The county could simply fire severely disabled employees even after a brief period of disability, thus saving the cost of its required contributions to the pension fund, and the pension board, in turn, would be able to terminate the employees' disability benefits. We therefore find that defendants' interpretation, that disability benefits end when an employee is terminated, leads inexorably to an absurd result and would undermine the beneficial purpose of the pension laws.

¶ 28 Our reading of the pertinent statutory provisions is also supported by the doctrine of *noscitur a sociis* ("a word is known by its companions"). As explained above, we do not find the statute ambiguous. But even if it were, this tool allows us to ascertain the meaning of an ambiguous statute by relating them to words or phrases associated with them in the statutory context. *Puritan Finance Corp. v. Bechstein Construction Corp.*, 2012 IL App (1st) 112261, ¶ 13. Article 9 often uses the term "employee" to refer to an individual who is receiving disability benefits. For example, section 9-135.1 (40 ILCS 5/9-135.1 (West 2018)) refers to a death benefit payable to "an employee in service or while receiving a retirement annuity". Section 9-161 (*id.* § 9-161) explains the calculation of annuities for an "employee who has withdrawn from service" then reenters service.

¶ 29 We conclude that, under the Code, O'Connell was entitled to disability benefits and continued county contributions to the pension fund because he was employed at the time of his application for disability benefits. We further find that his termination was not a triggering event causing the cessation of his disability benefits and county contributions to the pension fund. We now examine the circuit court's disposition of the various counts of the complaint in light of those findings. Only counts I, III, and V are at issue in this appeal. We again note that, since this appeal comes to us on dismissal pursuant to sections 2-615 and 2-619, we construe the allegations in the complaint as true.

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¶ 30 The circuit court’s dismissal of those counts was based entirely on its determination that O’Connell was no longer eligible for disability benefits and county contributions to the pension fund after the county terminated him. However, while the county may choose to terminate an employee who validly receives ordinary disability benefits, the pension board may not terminate the ordinary disability benefits solely because of that termination from employment, and the county may not refuse to make the required contributions to the pension fund in that instance. O’Connell seeks relief against the pension board for ordinary disability payments that would have been paid after his termination, relief against the county for contributions it should have made to the pension fund during the same period, and relief in that the payments and contributions continue according to the Code.

¶ 31 The elements of a declaratory judgment action are “ ‘(1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests.’ ” *The Carle Foundation v. Cunningham Township*, 2017 IL 120427, ¶ 26 (quoting *Beahringer v. Page*, 204 Ill. 2d 363, 372 (2003)). Based on our interpretation, O’Connell has a tangible pecuniary interest in his disability benefits and county contributions to the pension fund. Accordingly, the circuit court should not have dismissed O’Connell’s declaratory judgment action.

¶ 32 Count III sought relief in the form of *mandamus* against both defendants. A valid complaint for *mandamus* “must allege facts which establish a clear right to the relief requested, a clear duty of the respondent to act, and clear authority in the respondent to comply with the writ.” *Noyola v. Board of Education of the City of Chicago*, 179 Ill. 2d 121, 133 (1997) (citing *Dennis E. v. O’Malley*, 256 Ill. App. 3d 334, 340-41 (1993)). Again, based on our interpretation of the Code, we find that the circuit court erred in dismissing count III. Following O’Connell’s termination,

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each defendant had particular duties with respect to him. The pension board had a clear duty to make disability benefit payments, and the county had a clear duty to make contributions to the pension fund on his behalf. In particular, we note that, under section 9-160, the county was required to pay contributions toward O’Connell’s early annuity option “for the maximum time prescribed by this Article,” which in O’Connell’s case was about 4½ years—not merely until the county terminated him from employment. See *supra* ¶ 20.

¶ 33 For the same reason, the circuit court should not have dismissed count III pursuant to section 2-619 on the basis of lack of standing. Standing is “some injury in fact to a legally recognized interest.” *Glazewski v. Coronet Insurance Co.*, 108 Ill. 2d 243, 254 (1985). The claimed injury must be distinct and palpable, fairly traceable to the defendant’s actions, and substantially likely to be prevented or redressed by the grant of the requested relief. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492-93 (1988). Since O’Connell had the right to continuation of his disability benefits and county contributions to the pension fund after his termination from employment, and the relief in count III would have made him whole for his losses, he had standing to bring his claim.

¶ 34 The circuit court dismissed count V, a due process claim against the board only, on the basis that O’Connell had no protectable right to a continuation of his disability benefits. However, because he did have such a protectable right, count V stated a valid cause of action for violation of his due process rights, and we reverse the dismissal of that count, as well. Taking the allegations of the complaint before us as true, we find that the circuit court erred in dismissing count V because that count stated a valid cause of action and was otherwise sufficient to survive a motion to dismiss. As this court explained in *Kosakowski v. Board of Trustees of the City of Calumet City Police Pension Fund*, 389 Ill. App. 3d 381, 387 (2009):

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“The receipt of a disability pension is a property right which cannot be diminished without procedural due process. [Citation.] The essence of procedural due process is meaningful notice and a meaningful opportunity to be heard. [Citation.] In this case, the Board afforded the plaintiff neither. Without notice and without a hearing, the Board unilaterally attempted to modify the disability pension which it had previously awarded to the plaintiff. As a matter of due process, the Board should have provided the plaintiff with notice and an opportunity to be heard before modifying his pension.” (Internal quotations marks omitted.)

¶ 35 This disposition renders it unnecessary for us to consider O’Connell’s arguments that the Illinois Constitution’s pension protection clause (Ill. Const. 1970, art. XIII, § 5) requires reversal. See *In re E.H.*, 224 Ill. 2d 172, 178 (2006) (“cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort”).

¶ 36 CONCLUSION

¶ 37 Accordingly, we reverse the judgment of the circuit court of Cook County dismissing counts I, III, and V of the complaint and remand for further proceedings consistent with this opinion. Because O’Connell has presented no arguments on appeal regarding the dismissal of counts II and IV, those counts remains dismissed pursuant to the circuit court’s order.

¶ 38 Reversed and remanded.

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No. 1-20-1031

Cite as: *O'Connell v. County of Cook*, 2021 IL App (2d) 201031

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 20-CH-288; the Hon. Neil H. Cohen, Judge, presiding.

**Attorneys
for
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**Attorneys
for
Appellee:** Kimberly M. Foxx, State's Attorney, of Chicago (Cathy McNeil Stein, Mona E. Lawton, and Colleen M. Harvey, Assistant State's Attorneys, of counsel), for appellee County of Cook.

Vincent D. Pinelli and Sarah A. Boeckman, of Burke Burns & Pinelli, Ltd., of Chicago, for other appellee.

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JOHN O'CONNELL,)	
)	
Plaintiff,)	
)	
v.	)	20 CH 288
)	
COOK COUNTY and the BOARD OF)	
TRUSTEES OF THE COUNTY)	
EMPLOYEES' AND OFFICERS')	
ANNUITY AND BENEFIT FUND OF)	
COOK COUNTY,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

Defendant Board of Trustees of the County Employees' and Officers' Annuity and Benefit Fund of Cook County ("the Board") has filed a Motion to Dismiss Certain Counts of Plaintiff's Complaint and to Strike Portions of the Prayer for Relief pursuant to 735 ILCS 5/2-619.1.

Defendant Cook County ("the County") has filed a Motion to Dismiss Plaintiff's Complaint pursuant to 735 ILCS 5/2-619.1.

I. Background

Plaintiff John O'Connell has filed a Complaint for Declaratory Judgment, Mandamus and Violation of Civil Rights ("Complaint") against the Board and the County. Plaintiff alleges that he began employment with the County in 1999 and became a participant in the County Employees' and Officers' Annuity and Benefit Fund of Cook County ("Pension Fund"). In 2001, Plaintiff was diagnosed with multiple sclerosis. By the end of 2016, Plaintiff's health had deteriorated to the point where he could no longer work.

In 2017, Plaintiff took a leave of absence and applied to the Board for disability benefits under Article 9 of the Pension Code. The Board granted his application and also granted his subsequent applications for continuance of the disability benefits.

In May of 2019, the County sent a letter to Plaintiff requesting that he provide a return-to-work date. The letter informed Plaintiff that his employment would be terminated if he failed to provide a date. Plaintiff informed the County that he could not provide a date because he was unable to work. Plaintiff's employment was terminated on July 1, 2019.

Following the termination of Plaintiff's employment, the Board discontinued Plaintiff's disability payments. When Plaintiff contacted the Board for an explanation, he was informed that continued employment with the County was a requirement for the payment of disability benefits.

On July 24, 2019, Plaintiff, through counsel, sent a letter to Margaret Fahrenbach, the Board's legal advisor, requesting that Plaintiff's disability benefits be reinstated. Ms. Fahrenbach responded that the Board's position was that continued employment was necessary to receive disability benefits.

On August 7, 2019, Plaintiff, through counsel, sent a letter to County Human Resources requesting reinstatement of his employment so that he could continue to receive disability payments for the duration of time he was entitled to receive such benefits based on his years of service. On August 23, 2019, the County denied the request informing Plaintiff that the decision to administratively separate Plaintiff from his employment was unrelated to the Pension Fund, a separate legal entity.

On May 8, 2020, Plaintiff filed his Complaint. Count I asserts a claim for declaratory judgment against the County and the Board. Count I seeks declarations that: (1) continued employment with the County is not a requirement for receiving disability benefits; and (2) termination of Plaintiff's disability benefits violated the Pension Code and the Illinois Constitution.

Count II, pled in the alternative to Count I, asserts a claim for declaratory judgment against the County and the Board. Count II seeks a declaration that Plaintiff's administrative separation violated the Pension Code and Illinois Constitution.

Count III of the Complaint seeks a writ of *mandamus* ordering the Board to reinstate Plaintiff's disability benefits, retroactive to July 2, 2019, and the County to reinstate all contributions or benefits related to Plaintiff's disability benefits.

Count IV, pled in the alternative to Count III, seeks a writ of *mandamus* requiring the County to reinstate Plaintiff's employment, retroactive to July 2, 2019, and requiring the Board to reinstate Plaintiff's disability benefits, retroactive to July 2, 2019.

Count V alleges that the Board violated the Fourteenth Amendment of the United States Constitution and 42 U.S.C. §1983 because the Board terminated Plaintiff's disability benefits without a pre or post-deprivation hearing.

II. The County's Motion to Dismiss

The County is moving to dismiss the Complaint pursuant to 735 ILCS 5/2-619.1. "A section 2-615 motion to dismiss challenges the legal sufficiency of the complaint. Yoon Ja Kim v. Jh Song, 2016 IL App (1st) 150614-B, ¶41. "Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Id. "All well-pleaded facts and all reasonable inferences from those facts are taken as true. Where unsupported by allegations of

fact, legal and factual conclusions may be disregarded.” Kagan v. Waldheim Cemetery Co., 2016 IL App (1st) 131274, ¶29. “In determining whether the allegations of the complaint are sufficient to state a cause of action, the court views the allegations of the complaint in the light most favorable to the plaintiff. Unless it is clearly apparent that the plaintiff could prove no set of facts that would entitle him to relief, a complaint should not be dismissed.” Id.

A §2-619 motion to dismiss “admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action.” Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under §2-619 permits “the disposal of issues of law or easily proved facts early in the litigation process.” Id. Section 2-619(a)(9) authorizes dismissal where “the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9).

A. Count I (Declaratory Judgment)(§2-615)

Count I seeks declarations that continued employment is unnecessary to receive disability benefits and that the termination of Plaintiff’s disability benefits violated the Pension Code and the Illinois Constitution. To state a claim for declaratory judgment, the complaint must sufficiently allege: “(1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests.” Record-A-Hit v. National Fire Ins. Co., 377 Ill. App. 3d 642, 645 (1st Dist. 2007) quoting Behringer v. Page, 204 Ill. 2d 363, 372 (2003). A pleading that alleges sufficient facts to show an actual controversy between the parties and prays for a declaration of rights states a cause of action. Alderman Drugs, Inc. v. Metropolitan Life Ins. Co., 79 Ill. App. 3d 799, 803 (1st Dist. 1979).

The County contends that there is no actual controversy between the County and Plaintiff as to Count I. The court agrees. The Pension Code is clear that the Board is the entity authorized to carry out the provisions of the Pension Code. 40 ILCS 5/9-185. No provision of the Pension Code allows the County to decide who is eligible to receive a disability pension, to grant such a pension or to terminate such a pension. Only the Board possesses such authority. Therefore, Count I does not, and cannot, allege any actual controversy between the County and Plaintiff.

Count I is dismissed with prejudice as to the County.

B. Count II (Declaratory Judgment)(§2-615)

Count II, pled in the alternative, seeks a declaration that the County’s termination of Plaintiff’s employment violated the Pension Code and the Illinois Constitution. The County contends that Plaintiff had no right to continued employment with the County and, therefore, there is no tangible legal interest supporting declaratory relief. The County further argues that neither the Pension Code nor the Illinois Constitution provide that the County is obligated to maintain the employment of an employee receiving disability benefits.

Under Illinois law, a medical inability to work constitutes “a ‘legitimate nondiscriminatory reason’ for discharge.” Brummel v. Grossman, 2018 IL App (1st) 170516, ¶55 (internal citations omitted). “‘Illinois law does not obligate an employer to retain an at-will employee who is medically unable to return to his assigned position.’ Also, an employer is not obligated to reassign a disabled employee to another position rather than terminate his or her employment.” Id.

Under Illinois law, the County had the right to terminate Plaintiff’s employment based on his medical inability to return to work. While Plaintiff alleges that his termination was a violation of the Pension Code, Plaintiff does not identify any section of the Pension Code which prohibits a government employer from terminating the employment of an employee receiving disability benefits. An examination of the Pension Code reveals no such section.

Plaintiff further contends that his termination constituted a violation of the Pension Clause of the Illinois Constitution, but this is contrary to the case law. Article XIII, §5 of the Illinois Constitution of 1970 (“the Pension Clause”) provides that: “Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.” Ill. Const. 1970, art. XIII, §5. Pension benefits are protected under §5, whether those benefits were granted by statute or contract. Matthews v. Chicago Transit Authority, 2016 IL 117638.

The Illinois Supreme Court “has consistently held that the contractual relationship protected by [the Pension Clause] is governed by the actual terms of the contract or pension plan in effect at the time the employee becomes a member of the retirement system.” Matthews v. Chicago Transit Authority, 2016 IL 117638, ¶59. “While the pension protection clause guarantees the vested rights provided in the contract that defines a participants retirement system membership, it does not change the terms of that contract or the essential nature of the rights it confers.” ¶59.

Plaintiff’s disability benefits are only constitutionally protected to the extent of the vested benefits granted to him by statute or contract. Plaintiff has not identified any statute entitling him to employment with the County until his disability benefits are exhausted. Nor has Plaintiff alleged the existence of any enforceable contract pursuant to which the County agreed to continue his employment.

Because there is no statute or enforceable contract granting the Plaintiff the right to continued employment with the County while receiving disability benefits, the Complaint fails to allege any violation of the Pension Code. Furthermore, Illinois case law is clear that Plaintiff has no legal tangible interest in continued employment with the County. Therefore, Count II fails to state any viable claim against the County as a matter of law and must be dismissed with prejudice.

C. Counts III and IV (Mandamus)

1. Section 2-619(a)(9)

Count III, in part, seeks a writ of *mandamus* ordering the County to reinstate its contributions to the Pension Fund for Plaintiff's disability benefits. Count IV, pled in the alternative, seeks a writ of *mandamus* ordering the County to reinstate Plaintiff's employment until Plaintiff exhausts his disability benefits.

The County first contends that Counts III and IV should be dismissed because Plaintiff lacks standing. Standing requires an injury to a legally protected interest. Lombard Historical Comm'n v. Lombard, 366 Ill. App. 3d 715, 717 (2nd Dist. 2006). "To establish standing in a suit seeking a writ of mandamus, the complaining party must establish that there is a 'sufficiently protectable interest pursuant to statute or common law which is alleged to be injured.'" Cedarhurst of Bethalto Real Estate, LLC v. Vill. Of Bethalto, 2018 IL App (5th) 170309, ¶32.

As discussed above, Illinois law allows an employer to terminate the employment of an individual who is medically unable to perform his job duties. Plaintiff has failed to identify any contract or statute that would grant him the right to continued employment with the County. Nor has Plaintiff identified any contract or statute that requires the County to continue making contributions for disability benefits following his termination. Therefore, Plaintiff possesses no protectable interest under either statute or common law which was injured by the termination of his employment and the cessation of the County's contributions to the Pension Fund.

Plaintiff has no standing to seek a writ of *mandamus* against the County. Therefore, Counts III and IV are dismissed with prejudice as to the County.

2. Section 2-615

The County also contends that Counts III and IV should be dismissed pursuant to §2-615 because Plaintiff does not, and cannot, allege any facts showing that he has a right to continued employment with the County. The court agrees.

A party seeking *mandamus* must show a clear right to the relief sought. Noyola v. Bd. of Ed., 179 Ill. 2d 121, 133 (1997). As discussed above, Plaintiff had no right to continued employment with the County under common law and Plaintiff has not identified any statute or contract giving him a right to continued employment. Nor has Plaintiff identified any statute or contract requiring the County to continue making contributions on his behalf to the Pension Fund following the termination of his employment. Therefore, Plaintiff has no clear right to the relief sought against the County in Counts III and IV.

Counts III and IV are dismissed with prejudice pursuant to §2-615.

III. The Board's Motion to Dismiss

The Board is moving to dismiss the Complaint pursuant to 735 ILCS 5/2-619.1.

A. Section 2-619

The Board contends that all of Plaintiff's claims against it fail as a matter of law because Plaintiff had no legal right to disability payments following his termination. The Board asserts that the Pension Code does not provide for disability benefits to be paid to former employees.

1. Applicable Statutes

Section 9-157 of the Pension Code provides in relevant part as follows:

An employee . . . who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof.

* * *

Ordinary disability benefit shall be 50% of the employee's salary at the date of disability. Instead of all amounts ordinarily contributed by an employee and by the county for age and service annuity and widow's annuity based on the salary at date of disability, the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is deemed for annuity and refund purposes as amounts contributed by him. The county shall also contribute ½ of 1% salary deductions required as a contribution from the employee under Section 9-133.

An employee who has withdrawn from service or was laid off for any reason, who is absent from service thereafter for 60 days or more who re-enters the service subsequent to such absence is not entitled to ordinary disability benefit unless he renders at least 6 months of service subsequent to the date of such last re-entry.

40 ILCS 5/9-157.

Section 9-108 of the Pension Code provides that the following "employees" are entitled to benefits under the Pension Code:

(a) Any employee of the county employed in any position in the classified civil service of the county, or in any position under the County Police Merit Board as a deputy sheriff in the County Police Department. * * *

(b) Any employee of the county employed in any position not included in the classified civil service of the county whose salary or wage is paid in whole or in part by the county
* * *

(c) Any county officer elected by vote of the people, including a member of the county board, when such officer elects to become a contributor.

(d) Any person employed by the board.

(e) Employees of a County Department of Public Aid in counties of 3,000,000 or

40 ILCS 5/9-108.

2. Statutory Interpretation

“[T]he primary objective . . . in construing the meaning of a statute is to ascertain and give effect to the intention of the legislature.” In re Detention of Lieberman, 201 Ill. 2d 300, 307 (2002). “All other rules of statutory construction are subordinate to this cardinal principle. Id. “When the language of a statute is clear and unambiguous, a court must give effect to the plain and ordinary meaning of the language without resort to other tools of statutory construction.” Raintree Homes, Inc. v. Village of Long Grove, 209 Ill. 2d 248, 255 (2004).

“One of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole. Words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute.” Id. at 255-56, quoting, Michigan Ave. Nat'l Bank v. County of Cook, 191 Ill. 2d 493, 504 (2000). A court must construe a statute “so that each word, clause or sentence is given reasonable meaning and not deemed superfluous.” Id. at 256.

3. Whether a Former Employee is Entitled to Receive Disability Benefits

The Board contends that Plaintiff no longer had any right to collect disability benefits once his employment with the County was terminated. Article 9 of the Pension Code is clear that an “employee” who “is employed” by the County is entitled to receive disability benefits under the Pension Code. 40 ILCS 5/9-108; 40 ILCS 5/9-197. The Pension Code does not, however, contain any language which would support the continuance of disability benefits following termination of employment. Nor does the Pension Code contain any language defining a former employee as an “employee” for purposes of disability benefits.

Additionally, while Article 9 of the Pension Code contains definitions for “employee,” “present employee,” and “future entrant,” 40 ILCS 5/9-108; 40 ILCS 5/9-109; 40 ILCS 5/9-110, it contains no definition for “former employee” or “past employee” or “terminated employee.” Plaintiff has not identified any section of Article 9 of the Pension Code which supports the payment of disability benefits to a person no longer employed by the County.

The court further notes that where the legislature has intended former employees to be eligible to receive benefits, the legislature has clearly used such language. See, e.g., 40 ILCS 5/6-106 (defining a “fireman” as “any person who (a) *was*, is or shall be employed by a City”)(emphasis added). The definitions of Article 9 contain no such language. A court should

presume that when the legislature uses certain language in one part of a statute and different language in another part, different meanings were intended. People v. Davis, 2012 IL App (2d) 100934, ¶14; Gutraj v. Bd. Of Trustees of Police Pension Fund of Vill. of Grayslake, Illinois, 2013 IL App (2d) 121163, ¶8.

Finally, Article 9 of the Pension Code defines a “disability” as “a physical or mental incapacity as the result of which *an employee* is unable to perform the duties of his position.” 40 ILCS 5/9-113 (emphasis added). Section 9-113 does not include former employees within this definition of disability.

Article 9 of the Pension Code is clear that a person must be employed by the County to receive disability benefits. This is a necessary threshold to receiving disability benefits. Plaintiff has failed to identify any statutory provision providing otherwise. Nor has Plaintiff identified any case law holding that he is entitled to receive disability benefits as a former employee. Therefore, upon the County’s termination of his employment, Plaintiff was no longer entitled to receive disability benefits under the Pension Code.

While Plaintiff argues that benefits can only be terminated under certain circumstances, 40 ILCS 5/9-157, §9-157 of the Pension Code addresses triggering events that terminate an *employee’s* benefits. Plaintiff is not an employee and, therefore, not entitled to receive any benefits.

As discussed above in connection with the County’s motion to dismiss, Plaintiff had no right to continued employment with the County and there is no legal basis for ordering the reinstatement of his employment. Therefore, Plaintiff can only prevail on his claims against the Board in Counts I, II, III and IV of the Complaint if a former employee is entitled to receive disability benefits. As Article 9 of the Pension Code does not provide for the payment of disability benefits to former employees, Counts I, II, III and IV fail as a matter of law.

The Pension Clause of the Illinois Constitution cannot save Plaintiff’s claims. The Pension Clause does not create any additional rights, but protects only those rights granted by contract or statute. Matthews v. Chicago Transit Authority, 2016 IL 117638, ¶59. There is no contract or statute that grants a former County employee the right to receive disability benefits.

Counts I, II, III and IV are dismissed with prejudice pursuant to §2-619.

B. Section 2-615

The Board also contends that Plaintiff’s claims should be dismissed pursuant to §2-615.

1. Counts I and II (Declaratory Judgment)

Counts I and II seek declaratory judgment against the Board. In order to maintain an action for declaratory judgment, a plaintiff must possess a legal tangible interest. Record-A-Hit, 377 Ill. App. 3d at 645. As a former employee of the County, Plaintiff has no legal tangible

interest in continuing disability benefit payments. Therefore, Counts I and II fail to state a claim as a matter of law.

2. Counts III and IV (Mandamus)

Counts III and IV of the Complaint seek writs of *mandamus* against the Board. In order to maintain an action for a writ of *mandamus*, a plaintiff must have a protectable legal interest and a clear right to the relief sought. Lombard Historical Comm'n, 366 Ill. App. 3d at 717; Noyola, 179 Ill. 2d at 133. As a former employee of the County, Plaintiff has no protectable legal interest in receiving disability benefits and no clear right to such benefits. Therefore, Counts III and IV fail to state a claim as a matter of law.

3. Count V (Violation of the Fourteenth Amendment and §1983).

Count V of the Complaint alleges that the termination of his disability benefits by the Board without any hearing violated Plaintiff's right to due process under the Fourteenth Amendment of the U.S. Constitution and constituted a violation of 42 U.S.C. §1983. In order to be entitled to procedural due process, a plaintiff must possess a protectable interest in the form of life, liberty or property. Chicago Teachers Union Local No.1 v. Board of Educ., 2012 IL 112566, ¶12; Balmoral Racing Club, Inc. v. Illinois Racing Bd., 151 Ill. 2d 367, 405 (1992); Jackson v. City of Chicago, 2012 IL App (1st) 111044. If there is no protectable interest, there is no due process claim. Id.

"[A] property interest is involved only if 'a person clearly [has] more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.'" Petersen v. Chicago Plan Comm'n v. City of Chicago, 302 Ill. App. 3d 461, 467 (1st Dist. 1998), quoting, Board of Regents v. Roth, 408 U.S. 564, 577 (1972).

As discussed above, Plaintiff has no legitimate claim of entitlement to disability benefits as a former employee of the County. Therefore, he was not entitled to any procedural due process and cannot maintain a claim under the Fourteenth Amendment or §1983.

4. Requests for Attorney's Fees

Finally, the Board argues that there is no legal basis for the requests for attorney's fees made in Counts I, II, III and IV. While this issue is moot given that Counts I, II, III and IV fail as a matter of law, the Board is correct.

IV. Conclusion

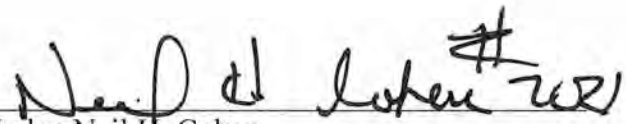
The County's Motion to Dismiss is granted with prejudice pursuant to §2-619 and §2-615.

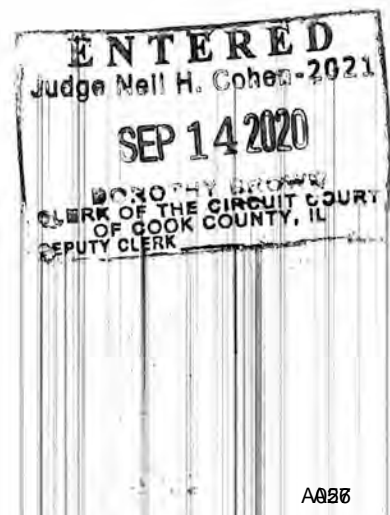
The Board's Motion to Dismiss is granted with prejudice pursuant to §2-619 and §2-615.

The status date of September 28, 2020 is stricken.

This order is final and appealable.

Enter: 9.14.20


Judge Neil H. Cohen



**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JOHN O'CONNELL,

Plaintiff,

v.

COOK COUNTY and BOARD OF TRUSTEES OF
THE COUNTY EMPLOYEES' AND OFFICERS'
ANNUITY AND BENEFIT FUND OF COOK
COUNTY, ILLINOIS,

Defendants.

No: 2020CH00288

Hearing Date: 5/8/2020 9:30 AM - 9:30 AM
Courtroom Number: 2308
Location: District 1 Court
Cook County, IL**COMPLAINT FOR DECLARATORY JUDGMENT,
MANDAMUS, AND VIOLATION OF CIVIL RIGHTS**

Plaintiff John O'Connell ("**O'Connell**"), by his attorneys, Miller Shakman Levine & Feldman LLP, for his complaint against Cook County ("**County**") and the Board of Trustees of the County Employees' and Officers' Annuity and Benefit Fund of Cook County, Illinois ("**Board**") (collectively, "**Defendants**"), alleges as follows:

INTRODUCTION

1. Defendants terminated O'Connell's disability benefits in violation of the Illinois Pension Code ("**Pension Code**"), the Illinois Constitution, and the U.S. Constitution.

2. The Constitution of the State of Illinois contains the clear and unwavering guarantee that "[m]embership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Ill. Const. 1970, art. XIII, § 5 (the "**Pension Clause**").

3. By virtue of this language, "if something qualifies as a benefit of the enforceable contractual relationship resulting from membership in one of the pension or retirement systems of

any unit of local government or school district of the State, ‘it cannot be diminished or impaired.’” *Carmichael v. Laborers’ & Retirement Bd. Employees’ Annuity & Benefit Fund*, 2018 IL 122793, ¶ 25 (citation omitted). This includes all pension benefits that flow directly from membership, including disability coverage.

4. O’Connell is caught in a catch-22 because of the actions of the Board and the County. The Board asserts that it terminated O’Connell’s disability benefits because the County refused to continue his status as an employee. The County refused to continue O’Connell’s status as an employee because he cannot return to work, which is inevitable for an individual like O’Connell who is completely disabled.

5. The Pension Code does not require O’Connell’s continued status as an employee to be eligible for the continuation of disability benefits. Terminating his disability benefits violates the Pension Code and the Pension Clause. In the alternative, the County’s termination of O’Connell violated the Pension Code and Pension Clause because it caused the termination of the disability benefits to which he is entitled. Additionally, the termination of O’Connell’s disability benefits without any notice or an opportunity to be heard violated O’Connell’s right to procedural due process.

SUMMARY OF ACTION

6. O’Connell began employment with the County in 1999 and became a participant in the County Employees’ and Officers’ Annuity and Benefit Fund (the “**County Pension Fund**”). In 2001, while working for the County, O’Connell was diagnosed with multiple sclerosis (“**MS**”). He worked for a number of years with accommodations as his health declined, until the end of 2016 when his health had degenerated to the point that he could no longer work.

7. Unable to work, O'Connell took a leave from his position with the County in early 2017 and applied to the Board for the disability benefits that he was promised under the Pension Code. The Pension Code guaranteed O'Connell disability benefits for a period of time (not to exceed five years) based on his years of service if he met certain criteria. O'Connell met the eligibility criteria. The Board, which administers disability benefits under the Pension Code, granted his application for disability benefits and his subsequent applications for the continuation of disability benefits. A representative of the Board has told O'Connell that based on his years of service, he was eligible to receive disability benefits until approximately August 2021.

8. In May 2019, shortly after the Board approved O'Connell's most recent application for the continuation of disability benefits, the County sent O'Connell a letter demanding that he provide a return-to-work date and threatening administrative separation should he fail to provide one. O'Connell contacted the Board and was told that it would end his disability benefits if the County terminated him. O'Connell told the County that he could not provide a return-to-work date because he was unable to work. He asked that the County continue his employment status for the period of time for which he was eligible to receive disability benefits. The County refused, disclaiming any role in the Board's administration of disability benefits, and administratively separated O'Connell on July 1, 2019.

9. Following O'Connell's administrative separation, the Board stopped paying him disability benefits without any notice. O'Connell called the Board, a representative of which told O'Connell that continued employment with the County is required for the continuation of disability benefits.

10. The Board is wrong. Nothing in the Pension Code imposes that requirement. The Board's termination of O'Connell's disability benefits on that basis violated the Pension Code and Article XIII, Section 5 of the Illinois Constitution.

11. In the alternative, if continued employment with the County is required for the continuation of disability benefits, the County's administrative separation of O'Connell before the end of the period in which he is entitled to receive disability benefits violated the Pension Code and Article XIII, Section 5 of the Illinois Constitution.

12. The Board's termination of O'Connell's disability benefits without notice or an opportunity to be heard also deprived O'Connell of his right to procedural due process guaranteed to him by the U.S. Constitution and in violation of 42 U.S.C. § 1983.

PARTIES

13. Plaintiff O'Connell is an individual who was an employee of the County from 1999 through July 2019 and a contributor to the County Pension Fund.

14. Defendant Board is a board of trustees created and governed by Article 9 of the Pension Code. The Board is authorized to carry out the Pension Code's provisions related to the County Pension Fund. 40 ILCS 5/9-185. Its powers and duties include "authoriz[ing] or suspend[ing] the payment of any annuity or benefit in accordance with" the Pension Code. 40 ILCS 5/9-196.

15. Defendant County is a governmental entity within the State of Illinois. The County employed O'Connell from 1999 through 2019.

JURISDICTION AND VENUE

16. The Court has subject matter jurisdiction for violations of the Illinois Constitution and violation of the Illinois Pension Code, 40 ILCS 5/1-115.

17. Venue is proper in the Circuit Court of Cook County, Illinois, pursuant to 735 ILCS 5/2-101, in that, among other things, the transactions, or some part thereof, out of which the causes of action arose, occurred in Cook County, Illinois.

ALLEGATIONS

Disability Benefits under the Pension Code

18. Article 9 of the Pension Code established the County Pension Fund and sets forth the pension, disability, and other benefits for employees of the County and the Forest Preserve District of Cook County. 40 ILCS 5/9-101 *et. seq.*

19. The Pension Code provides for two types of disability benefits, “duty disability benefits” for employees who are disabled as a result of an injury that occurs while working, and “ordinary disability benefits” for employees who become disabled as a result of a cause other than an injury while working.

20. As relevant here regarding “ordinary disability benefit,” the Pension Code provides:

An employee . . . who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof.

40 ILCS 5/9-157.

21. Under the Pension Code, “[e]mployee[,]” “contributor[,]” and “participant” have the same definition. 40 ILCS 5/9-108.

22. There are at least three benefits guaranteed to a disabled employee under the Pension Code while collecting disability benefits. First, the Board issues payments to disabled employees from the County Pension Fund in the amount of “50% of the employee’s salary at the

date of disability.” 40 ILCS 5/9-157. The payments provided for in Section 9-157 as part of the disability benefits are referred to herein as the “**Disability Benefit Payments.**”

23. Second, the Pension Code requires that the County contribute on behalf of the disabled employee to the County Pension Fund:

Instead of all amounts ordinarily contributed by an employee and by the county for age and service annuity and widow’s annuity based on the salary at date of disability, the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is deemed for annuity and refund purposes as amounts contributed by him. The county shall also contribute ½ of 1% salary deductions required as a contribution from the employee under Section 9-133.

40 ILCS 5/9-157.

24. Third, the County must also “contribute all amounts ordinarily contributed by it for annuity purposes for any employee receiving ordinary disability benefit as though he were in active discharge of his duties during such period of disability.” 40 ILCS 5/9-181. The contributions by the County required by Sections 9-157 and 9-181 are referred to herein as the “**County Contributions.**”

25. The Pension Code also provides at least two additional benefits if an employee has exhausted his credits for disability benefits and continues to be disabled. First, he “shall have the right to contribute to the fund at the current contribution rate for a period not to exceed a total of 12 months during his entire period of service and to receive credit for all annuity purposes for any such periods paid for.” 40 ILCS 5/9-174. This disability benefit is referred to herein as the “**Credit Purchase Option.**”

26. Second, if the employee has exhausted his credits for disability benefits and withdraws before age 60 while still disabled, he “is entitled to receive the annuity provided from the total sum accumulated to his credit from employee contributions and county contributions to

be computed as of his age on the date of withdrawal.” 40 ILCS 5/9-160. This disability benefit is referred to herein as the “**Early Annuity Option.**”

27. There are five dates set forth in Section 9-157 of the Pension Code upon which the disability benefits “shall cease”:

- (a) the date disability ceases.
- (b) the date the disabled employee attains age 65 for disability commencing prior to January 1, 1979.
- (c) the date the disabled employee attains 65 for disability commencing prior to attainment of age 60 in the service and after January 1, 1979.
- (d) the date the disabled employee attains the age of 70 for disability commencing after attainment of age 60 in the service and after January 1, 1979.
- (e) the date the payments of the benefit shall exceed in the aggregate, throughout the employee’s service, a period equal to $\frac{1}{4}$ of the total service rendered prior to the date of disability but in no event more than 5 years. In computing such total service any period during which the employee received ordinary disability benefit and any period of absence from duty other than paid vacation shall be excluded.

40 ILCS 5/9-157. Subsection (e) of Section 9-157 is referred to herein as the “**Years of Service Credits.**”

28. Additionally, the disability benefits are “not payable” if the disabled employee (a) refuses to submit to an examination by a board-appointed physician; (b) receives any part of his salary, or while employed by any public body supported in whole or in part by taxation; or (c) receives certain payments from the County under the Workers’ Compensation Act or Workers’ Occupational Diseases Act. 40 ILCS 5/9-159.

The County and the Board’s Premature Termination of O’Connell’s Disability Benefits

29. O’Connell started employment with the County in the summer of 1999. As an employee of the County, O’Connell was a contributing member of the County Pension Fund.

30. While employed by the County, O'Connell was diagnosed with MS. After working for several years with accommodations, O'Connell became unable to work due to his MS at the end of 2016. Among other symptoms, O'Connell could no longer stand or walk and suffered from extreme fatigue.

31. O'Connell exhausted his accrued paid leave and took a leave from his position with the County in January 2017. He applied for and began receiving disability benefits from the County Pension Fund.

32. O'Connell was and is entitled to receive disability benefits, including Disability Benefit Payments and County Contributions, until the end of his Years of Service Credits, because none of the other events set forth in Sections 9-157 (quoted in ¶ 27 above) applies or will apply to him.

33. His disability has not and will not cease, and he will not meet the conditions set forth in Section 9-157 (b)-(d). 40 ILCS 5/9-157(a)-(e). The three circumstances in Section 5/9-159 (quoted in ¶ 28 above) in which disability benefits are "not payable" likewise do not apply to O'Connell.

34. Upon information and belief, based on his Years of Service Credits, O'Connell was eligible for disability benefits through approximately August 2021. At the end of that period, he would be entitled to the Early Annuity Option and Credit Purchase Option.

35. Under the Pension Code, a disabled employee must periodically re-apply for the continuation of disability benefits. O'Connell has done so, and the Board has approved all of his applications. Most recently, on May 2, 2019, the Board granted O'Connell's application for a continuation of disability benefits through November 30, 2019. (Exhibit A.)

36. Two weeks later, on May 16, 2019, Simone McNeil, Deputy Bureau Chief for Cook County's Bureau of Human Resources ("**County Human Resources**"), sent O'Connell a letter requesting that he provide medical documentation indicating his expected return to work date. (Exhibit B.) The letter stated that the County would administratively separate O'Connell on May 29, 2019, if he did not provide the requested documentation or if was not released to return to work. (*Id.*)

37. O'Connell was surprised to receive this letter as he does not recall receiving any request from the County regarding a return-to-work date before the May 16, 2019 letter, and he had previously informed his department and County Human Resources that he would be unable to return to work. Additionally, the "Disability Provisions" of the Cook County Personnel Rules state that an employee need only notify their department heads of their readiness to return to work "before the termination dates of their disability leaves[.]" (Exhibit C at 43 (excerpt)), and the Board had just determined that O'Connell was entitled to receive disability benefits through at least November 30, 2019 (and was entitled to apply for disability benefits for a period of time after November 30, 2019 based on his years of service), (Exhibit A).

38. After receiving this letter, O'Connell called the Board to ask about the impact of his potential administrative separation on his ability to receive disability benefits. A representative of the Board told O'Connell that his disability benefits would end if the County terminated him as an employee.

39. O'Connell was unable to provide the documentation County Human Resources requested because he is unable to return to work. By a letter dated May 23, 2019, O'Connell informed County Human Resources that he could not provide the requested documentation and that the Board had recently approved his application to receive disability benefits through

November 30, 2019. (Exhibit D.) He also told County Human Resources that a representative of the Pension Fund had told him that his disability benefits would end upon the termination of his employment with the County. O'Connell requested that his employment be continued for the duration of the period in which he was entitled to collect disability benefits based on his years of service. (*Id.*)

40. McNeil responded in a letter dated June 13, 2019. (Exhibit E.) She stated that "all determinations regarding [O'Connell's] disability benefits fall solely within the discretion of the Pension Fund, which is a separate legal entity from the Cook County Offices under the President, [O'Connell's] employer." (*Id.*) McNeil again asked Mr. O'Connell to provide documentation indicating his return to work date and gave him until June 29, 2019, to do so.

41. O'Connell remained unable to provide the requested documentation because of his disability and was administratively separated effective July 1, 2019, by a letter from McNeil dated July 3, 2019. (Exhibit F.)

42. Following his administrative separation, O'Connell received a check from the Pension Fund with disability payments for one day of July. He did not receive any notification from the Pension Fund that his disability benefits were terminated.

43. Upon information and belief, the County has ceased making the County Contributions provided for in the Pension Code as part of the disability benefits.

44. Because O'Connell did not reach the end of the period of time in which he would be eligible to receive disability benefits based on his years of service, he was not provided the Credit Purchase Option or the Early Annuity Option.

45. On July 24, 2019, O'Connell, through counsel, sent Margaret Fahrenbach, Legal Advisor to the Board, a letter objecting to the termination of his disability benefits and requesting

their reinstatement. Fahrenbach responded that the Board's position is that continued employment status is required for the continuation of disability benefits. However, she also said that O'Connell's request was being reviewed by outside counsel. Despite repeated requests over several months, the Board has not provided a response to O'Connell's request for reinstatement of his disability benefits as of the date of the filing of this Complaint.

46. On August 7, 2019, O'Connell, through counsel, sent a letter to County Human Resources requesting reinstatement of his employment with the County so that he could continue to receive disability benefits for the duration of the period of time he was entitled to disability benefits based on his years of service. By a letter dated August 23, 2019, Velisha Haddox, the Bureau Chief of County Human Resources, denied the request, stating that "[t]he Bureau's decision to administratively separate Mr. O'Connell is unrelated to the Cook County Pension and Annuity Fund, a separate legal entity from Cook County Offices Under the President." (Exhibit G.)

COUNT I

Declaratory Judgment And Other Relief Against the Board and the County

47. O'Connell restates and incorporates the allegations in Paragraphs 1 through 46 as if fully set forth herein.

48. O'Connell seeks a determination pursuant to 735 ILCS 5/2-701 that (i) continued employment with the County is not required under the Pension Code for the continuation of disability benefits; and (ii) Defendants' termination of O'Connell's disability benefits violated the Pension Code and the Illinois Constitution.

49. There exists an actual, immediate, and justiciable dispute between O'Connell, on the one hand, and Defendants, on the other hand, as required under 735 ILCS 5/2-701, because

Defendants have ceased providing O'Connell disability benefits based on the termination of his employment with the County in violation of the Pension Code and the Illinois Constitution.

50. As set forth above, a disabled employee "is entitled to ordinary disability benefit during such disability" unless one of the events in Sections 9-157 and 9-159 causing the termination of disability benefits occurs. Neither section states that the termination of employment causes disability benefits to "cease" or become "not payable." There is no basis in the Pension Code for the Board's requirement for continued employment with the County for the continuation of disability benefits, and any such rule or requirement is null and void. It also defies common sense because a person who is completely disabled cannot work, yet disability benefits are plainly intended for such persons by the Pension Code.

51. As set forth above, absent the Board's "continued-employment" requirement, O'Connell would continue to receive disability benefits until the end of his Years of Service Credits. Upon information and belief, at the time O'Connell's disability benefits were terminated, he was eligible to receive disability benefits, including Disability Benefit Payments and County Contributions, for approximately two more years. At the end of that period, he would be entitled to the Early Annuity Option and Credit Purchase Option.

52. Defendants' termination of O'Connell's disability benefits violated the Pension Code and the Illinois Constitution because they deprived O'Connell of the disability benefits to which he was entitled, including Disability Benefit Payments, County Contributions, the Early Annuity Option, and the Credit Purchase Option.

WHEREFORE, O'Connell respectfully prays that this Court enter judgment:

- A. Declaring that continued employment with the County is not required under the Pension Code for the continuation of disability benefits;
- B. Declaring that Defendants' termination of O'Connell's disability benefits due to the termination of his employment with the County violated the Pension Code and the Illinois Constitution;
- C. Ordering Defendants to provide O'Connell disability benefits effective retroactively to July 2, 2019, until one of the specifically enumerated events in 40 ILCS 5/9-157(a)-(e) or 40 ILCS 5/9-159 occurs;
- D. Awarding O'Connell interest, including equitable interest, and attorneys' fees and costs; and
- E. Granting O'Connell such further relief as the Court deems just and proper.

COUNT II¹

Declaratory Judgment And Other Relief Against the County and the Board

53. O'Connell restates and incorporates the allegations in Paragraphs 1 through 46 as if fully set forth herein.

54. Because the Board requires continued employment with the County for the continuation of disability benefits, the County's administrative separation of O'Connell violated the Illinois Pension Code, 40 ILCS 5/9-101 et seq., and the Pension Protection Clause, Article XIII, Section 5, of the Illinois Constitution because of its known effect on O'Connell's disability benefits.

¹ Count II is pleaded in the alternative to Count I.

55. As set forth above, if O'Connell were still employed by the County, O'Connell would be eligible to continue to receive disability benefits until the end of his Years of Service Credits, even though he could not physically provide services as an employee. Upon information and belief, at the time O'Connell's disability benefits were terminated, he was eligible to receive disability benefits, including Disability Benefit Payments and County Contributions, for approximately two more years. At the end of that period, he would be entitled to the Early Annuity Option and Credit Purchase Option.

56. Cook County's administrative separation of O'Connell caused the immediate termination of the disability benefits to which he would otherwise be entitled, including Disability Benefit Payments, County Contributions, the Early Annuity Option, and the Credit Purchase Option, thereby "diminish[ing] or impair[ing]" O'Connell's right to disability benefits under the Pension Code.

WHEREFORE, O'Connell respectfully prays that this Court enter judgment:

- A. Declaring that the County's administrative separation of O'Connell violated the Pension Code and the Illinois Constitution;
- B. Ordering the County to reinstate O'Connell as a County employee, effective retroactively to July 2, 2019, until he is no longer eligible to receive disability benefits under the Pension Code, and granting him all of the benefits attendant to employment with County;
- C. Ordering Defendants to provide O'Connell disability benefits effective retroactively to July 2, 2019, until one of the specifically enumerated events in 40 ILCS 5/9-157(a)-(e) or 40 ILCS 5/9-159 occurs;

- D. Awarding O'Connell interest, including equitable interest, and attorneys' fees and costs; and
- E. Granting O'Connell such further relief as the Court deems just and proper.

COUNT III

Mandamus Against the Board and the County

57. O'Connell restates and incorporates the allegations in Paragraphs 1 through 52 as if fully set forth herein.

58. There is no provision in the Pension Code that requires the termination of disability benefits upon the termination of a disabled employees' employment with the County.

59. Defendants have no discretion to deny O'Connell continued disability benefits based on his employment status with the County.

60. O'Connell has requested, and Defendants have refused, to reinstate his disability benefits.

61. O'Connell has a clear right to continue to receive disability benefits under the Pension Code and the Illinois Constitution.

62. The Defendants have a clear duty to provide O'Connell the disability benefits to which he is entitled and the clear authority to do so under the Pension Code and Illinois Constitution.

WHEREFORE, O'Connell respectfully prays that this Court enter judgment:

- A. Issuing a writ of *mandamus* ordering
 - i. The Board to reinstate O'Connell's disability benefits effective retroactively to July 2, 2019, including the Disability Benefit Payments and any other benefits to which he is entitled under the Pension Code; and

- ii. The County to reinstate all contributions or benefits related to O'Connell's disability benefits, including the County Contributions, effective retroactively to July 2, 2019;
- B. Awarding O'Connell interest, and equitable interest, and attorneys' fees and costs; and
- C. Granting O'Connell such further relief as the Court deems just and proper.

COUNT IV²

Mandamus Against the County and the Board

63. O'Connell restates and incorporates the allegations in Paragraphs 1 through 46 and 53 through 56 as if fully set forth herein.

64. Because the Board requires continued employment with the County for the continuation of disability benefits, the County must maintain O'Connell in employed status until he is no longer eligible to receive disability benefits under the Pension Code.

65. The County has no discretion to refuse to maintain O'Connell's employed status while he is receiving disability benefits.

66. O'Connell has requested, and the County has refused, to reinstate him as a County employee.

67. O'Connell has requested, and Defendants have refused, to reinstate his disability benefits.

68. O'Connell has a clear right to remain an employee of the County in order to continue to receive disability benefits to which he is entitled under the Pension Code and the Illinois Constitution.

² Count IV is pleaded in the alternative to Count III.

69. The County has a clear duty to maintain O'Connell as an employee and Defendants have a clear duty to provide O'Connell the disability benefits to which he is entitled and the clear authority to do so under the Pension Code and Illinois Constitution.

WHEREFORE, O'Connell respectfully prays that this Court enter judgment:

- A. Issuing a writ of *mandamus* ordering
 - i. The County to reinstate O'Connell as a County employee, effective retroactively to July 2, 2019, until he is no longer eligible to receive disability benefits under the Pension Code;
 - ii. The Board to reinstate O'Connell's disability benefits effective retroactively to July 2, 2019, including the Disability Benefit Payments and any other benefits to which he is entitled under the Pension Code; and
 - iii. The County to reinstate all contributions and benefits related to O'Connell's disability benefits, including the County Contributions, effective retroactively to July 2, 2019;
- B. Awarding O'Connell interest, including equitable and attorneys' fees and costs; and
- C. Granting O'Connell such further relief as the Court deems just and proper.
- D. costs; and
- E. Granting O'Connell such further relief as the Court deems just and proper.

COUNT V**Violation of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983****Against the Board**

70. O'Connell restates and incorporates the allegations in Paragraphs 1 through 69 as if fully set forth herein.

71. O'Connell had a protected property interest in his disability benefits.

72. The Board terminated O'Connell's disability benefits without a pre- or post-deprivation hearing, guaranteed to him by the U.S. Constitution and in violation of 42 U.S.C. § 1983, and deprived him of rights guaranteed to him under the Due Process Clause of the Fourteenth Amendment.

73. O'Connell has suffered damages as a result.

WHEREFORE, O'Connell respectfully prays that this Court grant O'Connell the following relief on Count V:

- A. Judgment for compensatory damages in an amount to be determined at trial;
- B. An order requiring Defendants to provide O'Connell disability benefits until one of the specifically enumerated events in 40 ILCS 5/9-157(a)-(e) or 40 ILCS 5/9-159 occurs;
- C. An award of the costs of this action, including reasonable attorney's fees, in accordance with 42 U.S.C. § 1988; and
- D. Any other relief that this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury of all claims and/or issues triable by a jury.

Respectfully submitted,

JOHN O'CONNELL

By: /s/ Michael L. Shakman
One of his attorneys

Michael L. Shakman
Mary Eileen C. Wells
Miller Shakman Levine & Feldman LLP
180 North LaSalle Street
Suite 3600
Chicago, IL 60601
(312) 236-3700
Firm ID: 90236

EXHIBIT A



May 2, 2019

Office #152896

JOHN R O'CONNELL
1120 LAS BRISAS DR
MINDEN, NV 89423-4244

Dear Sir/Madam:

Your application for a continuation of ordinary disability benefits was presented to the Retirement Board on May 2, 2019. Your request for ordinary disability benefits was granted by the Board.

Your Benefits Information

- Your ordinary disability benefits payment period is December 1, 2018 through November 30, 2019 at a rate of \$125.96 per day.
- The amount of the full ordinary disability benefits is equal to 50% of your salary at the date of injury/illness.
- To continue these benefits beyond the dates specified, you must request and complete a "continuation of benefits" application.

Enclosed is the payment for disability benefits now due. Any future payments will be mailed on the last day of the month. If the last day of the month falls on a weekend, the check will be mailed the last business day of the month.

Regards,

Disability Benefits Department
DMD



County Employees' and Officers' Annuity and Benefit Fund of Cook County
Forest Preserve District Employees' Annuity and Benefit Fund of Cook County
70 W Madison St, Suite 1925 | Chicago, IL 60602 | 312.603.1200 | 312.603.9760 fax
www.cookcountypension.com | info@countypension.com

DIS0010AOD
04/13

A078

EXHIBIT B



BUREAU OF HUMAN RESOURCES

VELISHA L. HADDOX

BUREAU CHIEF

118 North Clark Street, Room 840 • Chicago, Illinois 60602 • (312) 603-3300

TONI PRECKWINKLE

PRESIDENT

**Cook County Board
of Commissioners**

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DENNIS DEER

2nd District

BILL LOWRY

3rd District

STANLEY MOORE

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PETER N. SILVESTRI

9th District

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10th District

JOHN P. DALEY

11th District

BRIDGET DEGNEN

12th District

LARRY SUFFREDIN

13th District

SCOTT R. BRITTON

14th District

KEVIN B. MORRISON

15th District

JEFFREY R. TOBOLSKI

16th District

SEAN M. MORRISON

17th District

May 16, 2019

John O'Connell

1120 Las Brisas Drive

Minden, Nevada 89423

Re: Expected Return to Work Date

Dear Mr. O'Connell,

You have been away from work on a medical leave of absence since 01-10-2017 with no projected return to work date. By May 29, 2019 you are required to please provide medical documentation indicating your expected return to work date to Renee Carrion, Personnel Services Manager. Ms. Carrion's contact information is as follows:

Telephone (312) 603-5981

Fax (312) 603-3747

Email Renee.Carrion@cookcountyil.gov

If you are released to return to work on a limited basis and wish to seek a reasonable accommodation, please complete the attached Reasonable Accommodation Request Form and submit it along with supporting medical documentation to the attention of Piemengie Hamisu, Acting EEO Officer by May 29, 2019. Ms. Hamisu's contact information is as follows:

Telephone (312) 603-1314

Fax (312) 603-0253

Email Piemengie.Hamisu@cookcountyil.gov

If the requested documentation is not timely received or if you are not medically released to return to work in any capacity by May 29, 2019 you will be administratively separated that same day.

Feel free to contact me with any questions at 312-603-6121.

Very truly yours,

Simone McNeil

Deputy Bureau Chief

EXHIBIT C

COUNTY OF COOK

PERSONNEL RULES

FILED DATE: 1/9/2020 3:08 PM 2020CH00288

IMPORTANT NOTICE

These Human Resources Rules are issued pursuant to the Human Resources Ordinance enacted as amended on April 5, 2000 and October 17, 2000 by the Cook County Board of Commissioners. The Ordinance directs the Chief of the Human Resources to issue rules. The Rules reflect procedures developed to comply with applicable federal, state and county laws and ordinances, the Judgment and Consent Decrees entered in Michael L. Shakman, et.al. v. The Democratic Organization of Cook County, et.al., No. 69 C 2145 on January 5, 1994 and other applicable statutes. In the event that provisions of these Rules vary from the terms of effective collective bargaining agreements, the terms of those agreements shall govern for affected members of the collective bargaining unit.

Please be advised that these Rules do not constitute a contract, and the language used in these Rules is not intended to create or to be construed as a contract or promise of continued employment. The Rules set forth general information and guidelines and do not purport to address every situation or contingency. Employees should direct questions about policies, programs or other applications of these Rules to the Bureau of Human Resources or other appropriate department. Employees should also be advised that the County Board has enacted Ordinances and that the President has promulgated Executive Orders from time to time and that they apply to all County employees. They appear in the Appendix to these rules and are hereby incorporated by reference. They include, without limitation, policies on Ethics, Human Rights, Domestic Violence, Drug-Free Workplace and Sexual Harassment. Employees should consult the Orders and Ordinances for their full text.

Please also be advised that the Ordinance empowers the County Board and the Chief of the Human Resources Bureau to enact amendments, revisions and changes to these Rules. The authority of the Chief of Human Resources to revise these Rules and promulgate new ones in accordance with the Human Resources Ordinance shall not be limited, circumscribed or otherwise affected by these Rules. Employees should consult the Rules from time to time to familiarize themselves with any revisions or additions to these Rules.

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should contact the Human Resources Leave Coordinator with questions pertaining to Family Military Service Leave.

(e) **Victims' Economic Security and Safety Act (VESSA)**

An employee who is a victim of domestic or sexual violence (sexual assault or stalking) or an employee who has a family or household member who is a victim of domestic or sexual violence whose interests are not adverse to the employee as it relates to the domestic or sexual violence may be eligible to take VESSA leave from the first day of employment if the employee or employee's family or household member is experiencing an incident of domestic or sexual violence or to address domestic or sexual violence as provided in the County's VESSA Leave Policy. Employees seeking VESSA leave should notify the BHR Leave Coordinator at least forty-eight (48) hours in advance of taking VESSA leave, unless such notice is not practicable. If such notice is not practicable, then the employee must provide notice of VESSA leave within a reasonable time period.

Employees may request VESSA leave through the Cook County Time and Attendance (CCT) System or by submitting a completed VESSA Leave Request Form to the BHR Leave Coordinator. The employee must provide proper certification and supporting documentation to the BHR Leave Coordinator. Failure to provide proper certification and documentation may result in delay or denial of leave. For more information, please see the County's Victims' Economic Security and Safety Act Leave Policy.

6.4 **DISABILITY PROVISIONS**

Employees should contact the Cook County Annuity and Benefit Fund ("Fund") to obtain an application, benefit information, eligibility rules and other documentation pertaining to ordinary or duty-related disability.

(a) **Ordinary Disability**

Ordinary disability is the result of injury or illness due to any cause other than that incurred in the performance of an act of duty. Employees seeking ordinary disability benefits are required to use all accrued paid leave (sick, personal and vacation) before any disability payment can be made by the Fund.

Employees must also inform their supervisors and department heads of their intention to apply for disability, as well as the length and terms of any benefits granted by the Fund. Employees must notify their department heads of their readiness to return to work before the termination dates of their disability leaves. In all cases, employees must notify their department heads within one business day after being released for duty by a physician or the expiration of benefits, whichever comes first.

An employee who is on official disability leave and returns to work within 60 calendar days after disability leave is terminated shall be eligible to receive the salary paid at the time disability leave started, provided the budget of the department can accommodate the salary and, if not, the employee shall be eligible to have the salary received at the time disability leave started restored at the earliest possible date.

(b) Duty-Related Disability

Duty-related disability results from injury or illness that arises out of and in the course of employment and in accordance with the Illinois Worker's Compensation Act, 820 ILCS 305, *et seq.*

1. It is the responsibility of injured employees to report any injury, regardless of severity, as soon as possible to their supervisor. The responding supervisor should ensure that the employee is provided with the appropriate medical response to the injury. The supervisor may, depending on the nature of the injury, request outside medical response to the situation. Once the injured employee provides verbal notice, the supervisor or manager is responsible for reporting the claim to the Department of Risk Management.
2. Cook County Department of Risk Management is responsible for the administration and payment of Worker's Compensation benefits for injuries or illness sustained in the course and scope of employment with Cook County. The Department of Risk Management performs these duties in accordance with the Illinois Workers' Compensation Act.
3. The injured worker is required to cooperate with the Department of Risk Management and at a minimum, must provide written medical updates within 24 hours of any evaluation and updated medical information and work restrictions every 30 days or as otherwise requested. The work restrictions should be shared with the employing department, and the employing department should make an effort to provide modified duty as outlined in the work restrictions.
4. Any employee who is off duty and receiving supplemental temporary total disability may be eligible to receive duty disability benefits as provided under the provisions of the Cook County Employees Annuity and Disability Fund. Separate application must be made with the Fund.
5. No employee shall return to duty after having been carried on supplemental temporary total disability or on temporary total disability compensation without a physician's approval to return to work and authorization from Cook County.
6. Employees on approved duty-disability leave will accrue paid time off in the same manner as afforded in the normal course of County Employment.

EXHIBIT D

Date: May 23, 2019

To: Simone McNeil, Deputy Director, Bureau of Human Resources

From: John O'Connell (County Employee No. 373292)

CC: President Toni Preckwinkle

Commissioner John Daley, Chairman, Finance Committee

Velisha Haddox, Bureau Chief, Human Resources

Renee Carrion, Personnel Services Manager

Piemengie Hamisu, Acting EEO Officer

Dear Ms. McNeil,

I tried reaching you by telephone but I was unable to do so. Therefore, I am submitting this letter as a written request.

I received your attached May 16, 2019, letter stating that I must provide medical documentation indicating my expected return to work date by May 29, 2019, and that I will be terminated if I am not medically released to return to work by May 29, 2019.

I have attached a May 2, 2019, letter from the Cook County Pension Fund showing that my application for continuation of disability benefits due to my Multiple Sclerosis was approved by the Retirement Board on May 2, 2019, for a period ending November 30, 2019. Under the Pension Fund's disability rules, with the number of years of my County service, I am eligible for approximately eight months of additional disability benefits beyond November 30, 2019, if I meet the medical requirements at that time.

I began working for Cook County around the Summer of 1999. In 2001, I was diagnosed with Multiple Sclerosis. By around late 2016, my neurological condition had worsened to the point where I was not able to work, and my neurologist told me I should not work. Among a variety of other symptoms, I could no longer stand or walk, and I suffered from extreme fatigue. These symptoms have continued to the present.

I applied for disability benefits from the Cook County Pension Fund and was granted those benefits by the Retirement Board around early 2017, based on information and medical documentation provided by my neurologist and an independent medical examination ordered by Cook County. Since then, and most recently on May 2, 2019, the Retirement Board has approved my applications for continuation of disability benefits. Each of these applications included up-to-date information and documentation provided by my neurologist and independent medical examinations by the County. The amount of disability time for which I am eligible is based on my years of service under County rules/ordinance.

All of the records which support and justify the County's granting of my disability benefits are with the Retirement Board. I am happy to make my medical records available to you if you wish.

At this time, I am unable to provide you with medical documentation authorizing my return to work by May 29, 2019, as you requested in your letter. The Retirement Board has informed me that I will lose my disability benefits if you terminate me. Therefore, I respectfully request that you allow me to use the disability benefits which I am granted by the Retirement Board under County rules/ordinance, rather than terminating me as threatened in your May 16, 2019, letter.

Finally, I have temporarily relocated to Nevada to be close to my sister so she can assist me with my daily activities when my wife is unable to do so.

Sincerely,

John R. O'Connell
708-271-3470, jt527@aol.com

A000

FILED DATE: 1/9/2020 3:08 PM 2020CH00288

EXHIBIT E

BUREAU OF HUMAN RESOURCES

VELISHA L. HADDOX

BUREAU CHIEF

118 North Clark Street, Room 840 • Chicago, Illinois 60602 • (312) 603-3300

**TONI PRECKWINKLE**

PRESIDENT

**Cook County Board
of Commissioners**

BRANDON JOHNSON

1st District

DENNIS DEER

2nd District

BILL LOWRY

3rd District

STANLEY MOORE

4th District

DEBORAH SIMS

5th District

DONNA MILLER

6th District

ALMA E. ANAYA

7th District

LUIS ARROYO JR

8th District

PETER N. SILVESTRI

9th District

BRIDGET GAINER

10th District

JOHN P. DALEY

11th District

BRIDGET DEGNEN

12th District

LARRY SUFFREDIN

13th District

SCOTT R. BRITTON

14th District

KEVIN B. MORRISON

15th District

JEFFREY R. TOBOLSKI

16th District

SEAN M. MORRISON

17th District

June 13, 2019

John O'Connell

1120 Las Brisas Drive

Minden, NV 89423

Email: Jt527@aol.com

Dear Mr. O'Connell,

The Cook County Bureau of Human Resources is in receipt of your letter dated May 23, 2019 requesting not to be terminated due to your medical condition and the Cook County Pension and Annuity Fund's (Pension Fund) approval of your disability benefits.

Please be advised that any all determinations regarding your disability benefits fall solely within the discretion of the Pension Fund, which is a separate legal entity from the Cook County Offices under the President, your employer.

We are granting you an extension of time, until June 29, 2019, to provide medical documentation indicating your projected return to work date and/or authorizing you to return to work with or without a reasonable accommodation. Failure to provide such documentation will result in administrative separation.

Feel free to contact me at 312-603-6121.

Very truly yours,

Simone McNeil

Deputy Bureau Chief

EXHIBIT F



BUREAU OF HUMAN RESOURCES

VELISHA L. HADDOX

BUREAU CHIEF

118 North Clark Street, Room 840 • Chicago, Illinois 60602 • (312) 603-3300

TONI PRECKWINKLE

PRESIDENT

**Cook County Board
of Commissioners**

BRANDON JOHNSON

1st District

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2nd District

BILL LOWRY

3rd District

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12th District

LARRY SUFFREDIN

13th District

SCOTT BRITTON

14th District

KEVIN MORRISON

15th District

JEFFREY R. TOBOLSKI

16th District

SEAN M. MORRISON

17th District

July 3, 2019

John O'Connell
1120 Las Brisas Drive
Minden, NV 89423

Dear Mr. O'Connell,

The Bureau of Human Resources has not received medical documentation indicating a projected return to work date. Nor has the Bureau of Human Resources received an authorization returning you to work with or without a reasonable accommodation. You have been separated from your position effective July 1, 2019.

Enclosed is a separation packet for your information and review.

Feel free to contact me at 312-603-6121.

Very truly yours,

Simone McNeil
Deputy Bureau Chief

EXHIBIT G



BUREAU OF HUMAN RESOURCES

VELISHA L. HADDOX

BUREAU CHIEF

118 North Clark Street, Room 840 • Chicago, Illinois 60602 • (312) 603-3300

TONI PRECKWINKLE

PRESIDENT

**Cook County Board
of Commissioners**

BRANDON JOHNSON

1st District

DENNIS DEER

2nd District

BILL LOWRY

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12th District

LARRY SUFFREDIN

13th District

SCOTT R. BRITTON

14th District

KEVIN B. MORRISON

15th District

JEFFREY R. TOBOLSKI

16th District

SEAN M. MORRISON

17th District

August 23, 2019

Michael L. Shakman

Miller, Shakman, Levine & Feldman, LLP

180 N. LaSalle Street

Chicago, IL 60601

Re: John O'Connell

Dear Mr. Shakman:

The Cook County Bureau of Human Resources (Bureau) is in receipt of your letter dated August 7, 2019. The Bureau's decision to administratively separate Mr. O'Connell is unrelated to the Cook County Pension and Annuity Fund, a separate legal entity from Cook County Offices Under the President.

For questions pertaining to Mr. O'Connell's benefits or any processes related thereto, you may contact Brent Lewandowski, Senior Benefits Manager, Cook County Pension and Annuity Fund at (312) 603-1218.

Sincerely,

Velisha L. Haddox

Bureau Chief

Bureau of Human Resources

FILED
9/28/2020 4:33 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH00288

**APPEAL TO THE ILLINOIS APPELLATE COURT, FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JOHN O'CONNELL,)
)
) Plaintiff-Appellant,)
)
) v.) 2020 CH 00288
)
) COOK COUNTY and BOARD OF TRUSTEES) Hon. Neil H. Cohen
) OF THE COUNTY EMPLOYEES' AND)
) OFFICERS' ANNUITY AND BENEFIT FUND)
) OF COOK COUNTY, ILLINOIS,)
)
) Defendants-Appellees.)

NOTICE OF APPEAL

Pursuant to Illinois Supreme Court Rules 301 and 303, Plaintiff-Appellant John O'Connell ("O'Connell"), hereby appeals to the Illinois Appellate Court, First District, the September 14, 2020 Order of the Circuit Court of Cook County entered in Case No. 2020 CH 00288. O'Connell respectfully asks the Appellate Court to reverse the foregoing order of the Circuit Court of Cook County, and, to the extent necessary, remand this matter for further proceedings.

Dated: September 28, 2020

Respectfully submitted,
John O'Connell,

By: /s/ Mary Eileen C. Wells
One of his attorneys

Michael L. Shakman (mlshak@aol.com)
Mary Eileen Cunniff Wells (mwells@millershakman.com)
MILLER SHAKMAN LEVINE & FELDMAN LLP (#90236)
180 N. LaSalle Street, Suite 3600
Chicago, Illinois 60601
312-263-3700

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on September 28, 2020, she caused a copy of the foregoing **Notice of Appeal** to be filed electronically with the Clerk of the Circuit Court of Cook County via Odyssey eFile Illinois and to be served via Odyssey eFile Illinois and e-mail upon the following counsel of record:

Vincent D. Pinelli
 Martin T. Burns
 Burke Burns & Pinelli, Ltd.
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 vpinelli@bbp-chicago.com
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Colleen Harvey
 Assistant State's Attorney
 500 Richard J. Daley Center
 Chicago, Illinois 60602
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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing Certificate of Service are true and correct, except as to matters therein stated to be upon information and belief and as to such matters the undersigned certifies that she verily believes the same to be true.

Dated: September 28, 2020

/s/ Mary Eileen C. Wells

No. 1-20-1031

IN THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

JOHN O'CONNELL,)	
)	
Plaintiff-Appellant,)	
	)	Appeal from the
v.	)	Circuit Court of Cook County
)	
COOK COUNTY and the BOARD	)	Case No. 2020 CH 00288
OF TRUSTEES OF THE COUNTY)	
EMPLOYEES' AND OFFICERS'	)	Hon. Neil H. Cohen
ANNUITY AND BENEFIT FUND)	
OF COOK COUNTY,)	
)	
Defendants-Appellees.)	

APPELLANT'S OPENING BRIEF

Michael L. Shakman (mlshak@aol.com)
Mary Eileen Cunniff Wells (mwells@millershakman.com)
Rachel Ellen Simon (rsimon@millershakman.com)
Miller Shakman Levine & Feldman LLP (#90236)
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ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

Plaintiff John O'Connell worked for Defendant Cook County (the "**County**") for 17 years, beginning in 1999, before he became permanently disabled due to multiple sclerosis. When his condition had deteriorated to the point that he could no longer work, he asked for and received leave from the County. He also asked for and received disability benefits from the other Defendant in this lawsuit, the Board of Trustees of the County Employees' and Officers' Annuity and Benefit Fund of Cook County (the "**Board**").

Starting in early 2017, the County placed O'Connell on disability leave and the Board paid his monthly disability benefits. The Board informed O'Connell that based on his years of service he would be entitled to ordinary disability benefits through approximately August 2021.

On July 1, 2019, the County terminated O'Connell as an employee because he was unable to return to work due to his permanent disability. And because O'Connell was no longer a County employee, the Board stopped paying him disability benefits on July 1, 2019.

In this lawsuit O'Connell seeks the remainder of the approximately four-and-a-half years of disability benefits that he had accrued under the Pension Code based on his more than 17 years of active service to the County. The Circuit Court dismissed his complaint with prejudice. All issues are raised on the pleadings. They involve the interpretation of the County Pension Code and the application of the Pension Clause of the Illinois Constitution – neither of

which requires continued employee status to received accrued pension disability benefits.

ISSUES PRESENTED FOR REVIEW

1. Whether the Board and the County violated the Pension Code and the Pension Clause of the Illinois Constitution by ceasing to pay O'Connell his accrued pension disability benefits because the County had terminated his status as an employee due to his permanent disability.

2. Whether there are actual controversies between O'Connell and the County subject to declaratory relief.

3. Whether the Board violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution by terminating O'Connell's disability benefits without any process, notice, or hearing.

The Circuit Court's ruling on the first two issues were dispositive on Counts I, III, and V of O'Connell's Complaint, and O'Connell seeks reversal of the Circuit Court's dismissal of those counts. O'Connell does not appeal the Circuit Court's dismissal of Counts II and IV.

JURISDICTION

Under Supreme Court Rules 301 and 303, jurisdiction is based upon a timely notice of appeal filed by O'Connell on September 28, 2020 (A1-2),

following entry of the Circuit Court’s final order dated September 14, 2020 (the “**Order**”) (A3-12).¹

STATUTES INVOLVED

This appeal involves Article 9 of the Illinois Pension Code, 40 ILCS 5/9-101 *et seq.* Because of Article 9’s length, the relevant sections are provided in the Appendix. (A53-57.)

STATEMENT OF FACTS

I. The County and the Board Terminate O’Connell’s Disability Benefits Because He Is Unable to Work Due to His Disability.

O’Connell began his employment with the County in 1999. At that time, he also became a participant in and contributor to the County Employees’ and Officers’ Annuity and Benefit Fund (the “**County Pension Fund**”). (Compl. ¶ 29, A19.) County employees are required to contribute a percentage of their salaries to the County Pension Fund every month. *See* 40 ILCS 5/9-169 (referring to “the amounts deducted from the salaries of the employees”).²

In 2001, while working full time for the County, O’Connell was diagnosed with multiple sclerosis. (Compl. ¶ 30, A20.) He continued to work

¹ The record is cited as follows: appendix (A__) and court filings (C__). Additional descriptions are provided when appropriate.

² *See also Employee Contributions, COOK COUNTY PENSION FUND*, <https://www.cookcountypension.com/employees/contributions> (last visited Dec. 24, 2020).

with accommodations until the end of 2016, when his health had deteriorated to the point that he could no longer work. (*Id.*)

In January 2017, O’Connell took leave from his position with the County and applied to the Board for the disability benefits that he was promised under the Pension Code. (*Id.* ¶ 31, A20.) The Board granted his application for benefits. (*Id.* ¶ 7, A15.) Under the Board’s rules, a disabled employee must periodically reapply for the continuation of disability benefits. O’Connell did so, and the Board approved all of his subsequent applications for the continuation of benefits. (*Id.*) Most recently, on May 2, 2019, the Board granted his application for a continuation of disability benefits through November 30, 2019. (*Id.* ¶ 35, Ex. A, A20, A33.) A representative of the Board told O’Connell that based on his years of service with the County, he was eligible to receive disability benefits until approximately August 2021. (Compl. ¶ 7, A15.)

A few weeks later, on May 16, 2019, the County sent O’Connell a letter requiring that he provide medical documentation indicating his expected return-to-work date. (*Id.* ¶ 36, Ex. B, A21, A35.) The letter stated that if the requested documentation was not received by May 29, 2019, or if O’Connell was not medically released to return to work by that date, he would be “administratively separated.” (*Id.*) O’Connell contacted the Board and was told that the Board would cease paying his disability benefits if the County terminated him. (Compl. ¶ 38, A21.) O’Connell explained to the County that

he could not provide a return-to-work date because he is unable to work due to his permanent disability. (*Id.* ¶ 39, A21-22.) He asked the County to continue his employment status for the period in which he was eligible to receive disability benefits based on his years of service. (*Id.*) The County refused, disclaiming any role in the Board’s administration of disability benefits, and terminated O’Connell effective July 1, 2019. (*Id.* ¶¶ 40-41, A22.)

After O’Connell’s termination by the County, the Board – without giving any advance notice or opportunity to object – stopped paying his disability benefits. (*Id.* ¶ 42, A22.) At the same time, the County stopped making contributions to the County Pension Fund on O’Connell’s behalf (the “County Contributions,” discussed below). Such contributions are required by the Pension Code as part of disability benefits. (*Id.* ¶ 43, A22.) In addition, because O’Connell’s disability benefits were terminated before he reached the end of the disability-benefits eligibility period based on his years of service, he lost other benefits to which he was otherwise entitled under the Pension Code: the “Credit Purchase Option” and the “Early Annuity Option,” which are discussed below. (*Id.* ¶ 44, A22.)

On July 24, 2019, O’Connell, through counsel, sent Margaret Fahrenbach, the Legal Advisor to the Board, a letter objecting to the termination of his disability benefits and requesting their reinstatement. (*Id.* ¶ 45, A22-23.) Fahrenbach responded orally that the Board’s position is that continued employment status is required for the continuation of disability

benefits but that outside counsel was reviewing O'Connell's request. Despite repeated requests over several months, the Board did not respond to O'Connell's request for reinstatement of his disability benefits. (*Id.*)

II. Proceedings in the Circuit Court.

On January 9, 2020, O'Connell sued the Board and the County, alleging that the termination of his disability benefits violates the Illinois Constitution, the Illinois Pension Code, and the Fourteenth Amendment of the United States Constitution. His complaint contained the following counts:

- Counts I (Declaratory Judgment) and III (Mandamus) seeking reinstatement of O'Connell's disability benefits because continued employment with the County is not required for the continuation of disability benefits. (Compl. ¶¶ 47-52, 57-62, A23-24, A27.)
- Counts II (Declaratory Judgment) and IV (Mandamus), pleaded in the alternative to Counts I and III, seeking reinstatement of O'Connell's employment with the County if continued employment is required for him to continue to receive disability benefits, and reinstatement of his disability benefits. (Compl. ¶¶ 53-56, 63-69, A25-26, A28-29.)
- Count V, against only the Board, alleging a violation of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983, based on the Board's termination of O'Connell's disability benefits without due process. (Compl. ¶¶ 70-73, A30.)

The Board and the County filed separate motions to dismiss under 735 ILCS 5/2-619.1. The Circuit Court granted both motions and dismissed the complaint with prejudice. (Order, A3-12.) The Circuit Court dismissed Counts I, III, and V against the Board, and Count III against the County, based on its erroneous conclusion that O'Connell, as a former employee, did not have a right to continued disability benefits. (*Id.*) The Circuit Court also dismissed Count

I against the County for lack of an “actual controversy” between the County and O’Connell. (*Id.* at 3, A5.)

O’Connell timely appealed and seeks reversal of the Circuit Court’s dismissal of Counts I, III, and V.

STANDARD OF REVIEW

This Court reviews *de novo* the dismissal of a complaint under either Section 2-615 or Section 2-619 of the Code. *Calloway v. Chicago Bd. of Election Comm’rs*, 2020 IL App (1st) 191603, ¶ 9. When reviewing the sufficiency of a complaint under a Section 2-615 motion to dismiss, the Court must accept as true all well-pleaded allegations in the complaint, *id.*, ¶ 21, and “should dismiss the cause of action ‘only if it is clearly apparent that no set of facts can be proven which will entitle the plaintiff to recovery,’” *id.*, ¶ 10 (citation omitted). A motion to dismiss under Section 2-619, on the other hand, “admits the sufficiency of the complaint but asserts an affirmative matter that avoids or defeats the claim.” *Id.*, ¶ 9. When considering a Section 2-619 motion, the Court again must accept the complaint’s well-pleaded allegations as true and view them in the light most favorable to the nonmovant. *American Family Mut. Ins. Co. v. Krop*, 2018 IL 122556, ¶ 13.

De novo review also is appropriate because resolution of this appeal turns on the interpretation of the Pension Code and the Pension Clause of the Illinois Constitution. *Accettura v. Vacationland, Inc.*, 2019 IL 124285, ¶ 11.

ARGUMENT

I. Applicable Legal Authorities

Article 9 of the Pension Code and the Pension Clause of the Illinois Constitution “must be liberally construed in favor of the rights of the pensioner.” *Carmichael v. Laborers’ & Ret. Bd. Employees’ Annuity & Benefit Fund*, 2018 IL 122793, ¶ 24. “[T]o the extent that there may be any lingering doubt about the meaning or effect of the provisions at issue in this case, [this Court] must resolve that doubt in favor of the members of [the] public retirement system.” *Id.*

A. The Pension Clause of the Illinois Constitution

The Pension Clause guarantees that “[m]embership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.” Ill. Const. 1970, art. XIII, § 5 (the “**Pension Clause**”). In other words, “if something qualifies as a benefit of the enforceable contractual relationship resulting from membership in one of the pension or retirement systems of any unit of local government . . . ‘it cannot be diminished or impaired.’” *Carmichael*, 2018 IL 122793, ¶ 25 (citation and internal quotation marks omitted). All pension benefits that flow directly from membership, including disability benefits, are protected, *id.*, and “members of pension plans subject to its provisions have a legally enforceable right to receive the benefits they have

been promised,” *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 46; *see also Bd. of Trustees of City of Harvey Firefighters’ Pension Fund v. City of Harvey*, 2017 IL App (1st) 153074, ¶ 176.

B. Article 9 of the Pension Code

The contractual relationship protected by the Pension Clause “is governed by the actual terms of the contract or pension plan in effect at the time the employee becomes a member of the retirement system.” *Matthews v. Chicago Transit Auth.*, 2016 IL 117638, ¶ 59. Here, the relevant contractual provisions are contained in Article 9 of the Illinois Pension Code, 40 ILCS 5/9-101 *et seq.*, which established the County Pension Fund and sets out the annuities, disability benefits, and other pension benefits for County employees. Article 9 provides for two types of disability benefits: the “duty disability benefit” for employees who are disabled as a result of an injury incurred on the job, and the “ordinary disability benefit” for employees who become disabled from any other cause. Only the latter is relevant here.

For the ordinary disability benefit, the Pension Code provides, in part, that

An employee . . . who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof.

40 ILCS 5/9-157. That provision does not require that the “employee . . . who becomes disabled” must remain a County employee to be entitled to “ordinary disability benefit during such disability.”

The Pension Code guarantees at least three benefits to eligible disabled employees. *First*, the Board issues payments to disabled employees from the County Pension Fund in the amount of “50% of the employee’s salary at the date of disability”; these payments are referred to herein as “**Disability Benefit Payments**.” *Id.* *Second*, the Pension Code requires that the County contribute to the County Pension Fund on behalf of the disabled employee:

Instead of all amounts ordinarily contributed by an employee and by the county for age and service annuity and widow’s annuity based on the salary at date of disability, the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is deemed for annuity and refund purposes as amounts contributed by him. The county shall also contribute ½ of 1% salary deductions required as a contribution from the employee under Section 9-133.

Id. *Third*, the County must “contribute all amounts ordinarily contributed by it for annuity purposes for any employee receiving ordinary disability benefit as though he were in active discharge of his duties during such period of disability.” 40 ILCS 5/9-181. The two types of contributions by the County required by Sections 9-157 and 9-181 are referred to herein as the “**County Contributions**.”

If an employee has exhausted his credits for disability benefits and continues to be disabled, the Pension Code provides at least two additional

benefits. *First*, the employee has “the right to contribute to the fund at the current contribution rate for a period not to exceed a total of 12 months during his entire period of service and to receive credit for all annuity purposes for any such periods paid for.” 40 ILCS 5/9-174. This benefit is referred to herein as the “**Credit Purchase Option.**” *Second*, if the employee has exhausted his credits for disability benefits and withdraws before age 60 while still disabled, he “is entitled to receive the annuity provided from the total sum accumulated to his credit from employee contributions and county contributions to be computed as of his age on the date of withdrawal.” 40 ILCS 5/9-160. This disability benefit is referred to herein as the “**Early Annuity Option.**”

Article 9 of the Pension Code specifies eight circumstances in which disability benefits will be terminated. Only one could apply to O’Connell – and it does not come into play until he has received his accrued disability benefits, an event that never occurred because of the County and the Board’s actions. The first five are found in Section 9-157, which provides that disability benefits “shall cease” when the first of the following five dates occurs:

- (a) the date disability ceases.
- (b) the date the disabled employee attains age 65 for disability commencing prior to January 1, 1979.
- (c) the date the disabled employee attains 65 for disability commencing prior to attainment of age 60 in the service and after January 1, 1979.
- (d) the date the disabled employee attains the age of 70 for disability commencing after attainment of age 60 in the service and after January 1, 1979.

- (e) the date the payments of the benefit shall exceed in the aggregate, throughout the employee's service, a period equal to $\frac{1}{4}$ of the total service rendered prior to the date of disability but in no event more than 5 years. In computing such total service any period during which the employee received ordinary disability benefit and any period of absence from duty other than paid vacation shall be excluded.

40 ILCS 5/9-157 (emphasis added). (Subsection (e) is referred to herein as the **"Years of Service Credits."**)

The other three inapplicable benefit-terminating circumstances are contained in Section 9-159, which states that disability benefits are "not payable" if the disabled employee (a) refuses to submit to an examination by a board-appointed physician; (b) receives any part of his salary or is employed by any public body supported in whole or in part by taxation; or (c) receives certain payments from the County under the Workers' Compensation Act or Workers' Occupational Diseases Act. 40 ILCS 5/9-159.

II. The County and the Board's Termination of O'Connell's Disability Benefits Violated the Pension Clause and the Pension Code.

O'Connell became disabled while employed by the County, initially applied for and received disability benefits while employed by the County, and was terminated by the County solely because of his inability to return to work due to his permanent disability. There is no dispute that if the County had not terminated his employee status, O'Connell would be entitled to receive disability benefits through approximately August 2021 based on his Years of Service Credits. The question presented in this appeal is whether O'Connell

is entitled to disability benefits until his Years of Service Credits are exhausted regardless of whether his status as a County employee continues.

The answer is that he is so entitled since none of the statutory provisions for termination of benefits applies. The Pension Code does not list termination of employment as a qualifying event for ceasing disability benefits. While only “[a]n employee” is eligible for disability benefits under Section 9-157, the term “employee” includes both current *and former* employees based on the definition of “employee” and its use throughout Article 9. The statutory framework and the purpose of the pension disability benefits also support this reading. Accordingly, the Board and the County’s actions denying O’Connell the remaining disability benefits to which he is entitled violate both the Pension Code and the Pension Clause.

A. The Plain Language of Article 9 Establishes that “Employee” Includes Former Employees.

The Board contends that it was entitled to terminate O’Connell’s disability benefits because he was no longer an “employee” under Section 9-157 once the County terminated his employee status due to his disability. The Board’s position is contrary to the definition and use of the term “employee” in Article 9 of the Pension Code. When construing a statute, the primary goal “is to ascertain and give effect to the legislature’s intent,” with the “best indicator of that intent [being] the language of the statute itself.” *Carmichael*, 2018 IL 122793, ¶ 35. Again, if there is “any lingering doubt about the meaning or

effect of the provisions” in the Pension Code, the Court “must resolve that doubt in favor of the members of [the] public retirement system.” *Id.*, ¶ 24.

1. The Definition of “Employee” in Article 9 Makes Clear that “Employee” Includes Former Employees – Thus, O’Connell Remained Entitled to Disability Benefits.

Section 9-108(a), in part, defines an “[e]mployee,” “contributor,” or “participant” as:

Any employee of the county *employed* in any position in the classified civil service of the county Any such employee in service on or after January 1, 1984, regardless of when he became an employee, shall be deemed a participant and contributor to the fund created by this Article *and the employee shall be entitled to the benefits of this Article.*

40 ILCS 5/9-108(a) (emphasis added).

The definition uses the past participle “employed,” which can refer to past, present, or future County employees. Bas Aarts, Sylvia Chalker & Edmund Weiner, *The Oxford Dictionary of English Grammar* 291 (2nd ed. 2014) (past participles can be used to refer “to past, present, or future time”). The only temporal limitation in this definition is that the employee must have been “in service on or after January 1, 1984.” Contrary to the Board’s position, this definition does not limit the meaning of “employee” to persons currently employed by the County at the time of entitlement to benefits. Had the General Assembly intended that meaning, it could easily have added to the last words of the definition the phrase “while the employee remains employed by the County.” But it did not.

The italicized language in Section 9-108(a), above, also establishes that “employee” is not limited to current employees. Significantly, the “benefits” to which the “employee” is expressly “entitled” under Article 9 include retirement annuities, widows’ annuities, and children’s annuities – plainly benefits that are available only to *former* employees or their family members. For instance, current employees do not receive “retirement annuities” while still working for the County; the “employees” eligible for “retirement annuities” are former employees.

Thus, “employee” as defined in Section 9-108(a) can only reasonably be read to include former as well as current employees. Accordingly, the plain language of Article 9 establishes that O’Connell is entitled to continued disability benefits despite the County’s termination of his employee status. If there were any doubt about this interpretation (there is not), the liberal rules of interpretation discussed above require that the Court “resolve that doubt” in O’Connell’s favor. *Carmichael*, 2018 IL 122793, ¶ 24.

2. “Employee” as Used Throughout Article 9 Refers to Both Current and Former Employees.

Article 9 is replete with examples of the term “employee” being used to refer to *former* employees and their families, rebutting the County and the Board’s argument to the contrary. For example:

- Section 9-135.1 discusses the death benefit payable “[u]pon the death of an employee in service *or* while receiving a retirement annuity.” 40 ILCS 5/9-135.1 (emphasis added). The only employees that can receive a retirement annuity are, by definition, former employees.

- Section 9-148 states that in certain circumstances “widows or wives of employees have no right to annuity,” such as “(c) The widow or wife of an employee with 10 or more years of service whose death occurs out of and *after he has withdrawn from service*, and who has received a refund of contributions for annuity purposes; [and] (d) The widow or wife of an employee with less than 10 years of service who dies out of service *after he has withdrawn from service* before he attained age 60.” 40 ILCS 5/9-148 (emphasis added).
- Section 9-154 provides, in part, that a “Child’s Annuity” is payable “[u]pon death of an employee *who withdraws from service* after age 50 . . . and who has entered upon or is eligible for annuity.” 40 ILCS 5/9-154(c) (emphasis added).
- Section 9-159 refers to the disability benefit payable to the widow of “an employee,” who, being deceased, clearly is not a current employee. 40 ILCS 5/9-159.
- Section 9-160 states that for “[a]n employee whose disability continues after he has received ordinary disability benefit for the maximum period of time prescribed by this Article, and who *withdraws* before age 60 while still so disabled,” the employee’s children are entitled to certain annuity benefits “[u]pon [his] death.” 40 ILCS 5/9-160 (emphasis added).
- Section 9-161 discusses the calculation of annuities “[w]hen an employee *who has withdrawn from service* after the effective date re-enters service.” 40 ILCS 5/9-161 (emphasis added).

In each of these provisions, the term “employee” is used to refer to an “employee” who is *not* a current employee. The meaning of “employee” as used in Section 9-157 also is not so limited. Accordingly, O’Connell is entitled to continue to receive disability benefits regardless of his “administrative separation” from the County.

**B. Interpreting “Employee” as Meaning Only
Current Employees Would Frustrate the Statutory
Framework and Lead to Absurd and Unjust Results.**

The statutory framework of Article 9 makes clear that termination of employment does not, on its own, extinguish an employee’s entitlement to disability benefits. Aside from its argument that “employee” in Article 9 means only current employee – which, as discussed, contradicts the plain language of the statute – the Board points to no other basis in the statute for ceasing O’Connell’s disability benefits based on the County terminating his employee status. There is none. Article 9 clearly states that a disabled employee is “entitled to ordinary disability benefit *during such disability*” until the occurrence of one of five enumerated events (or “dates”) that cause the disability benefits to “cease,” 40 ILCS 5/9-157 (emphasis added), *or* until one of three listed events that make the disability benefits “not payable,” 40 ILCS 5/9-159. Indisputably, none of these eight possible benefits-terminating events applies to O’Connell.

This is the rule that applies in such circumstances: “Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words of limitation.” *In re Estate of Lewy*, 2018 IL App (1st) 172552, ¶ 16 (citations omitted); *see also Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 152 (1997) (where a statute lists the things to which it refers, “the inference that all omissions should be understood as exclusions stands despite the lack of any

negative words of limitation”). Here, neither Section 9-157 nor Section 9-159 lists termination of County employment as a benefit-terminating event. Therefore, the Court should not expand on the limited set of events that the legislature defined, particularly when that results in the forfeiture of pension benefits to a permanently disabled individual. *See Shields v. Judges’ Ret. Sys. of Ill.*, 204 Ill. 2d 488, 496-97 (2003) (declining to find basis for limiting refund of pension contributions based on pensioner’s felony conviction where statute was “silent on the subject”).

Interpreting “employee” in Section 9-157 as meaning only current employees, as the Board urges, leads to absurd and unjust results. When interpreting a statute, it is proper to consider “the reason for the law, the problem sought to be remedied, the goals to be achieved, and the consequences of construing the statute one way or another.” *Carmichael*, 2018 IL 122793, ¶ 35. Here, if “employee” in Section 9-157 excluded employees such as O’Connell who are administratively separated while receiving disability benefits, then the length of time that an employee is entitled to the ordinary disability benefit would not be established by one of the carefully defined terminating events specifically listed in the Pension Code. Instead, it would depend on the County’s leave policy and when the County’s human resources department decided to terminate the employee. Such an interpretation would have the perverse effect of incentivizing the County to terminate any employee who became permanently disabled during his or her employment regardless of

how long the employee had served the County and contributed to the County Pension Fund. Such an action would save the County money and deprive the employee of the disability benefits to which he would otherwise be entitled. It is impossible to believe the General Assembly would have wished to permit such action.

The illogic and unfairness of the Board's position is evident: The County terminated O'Connell's employee status solely because he was unable to provide a return-to-work date because of his permanent disability. In other words, his employment status – and therefore his disability benefits – ended *because* he is permanently disabled, even though under express provisions of the Pension Code he still had approximately two years of disability benefits remaining based on his Years of Service Credits – rights earned from more than 17 years of service to the County.

In short, the only reasonable way to interpret “employee” in Section 9-157 is that it includes both current and former employees. That is how “employee” is used in the definition and throughout Article 9. That meaning is consistent with the narrow definitions of circumstances for the termination of disability benefits, and it avoids absurd results. Regardless of his employment status with the County, O'Connell is entitled to disability benefits until one of the events listed in Sections 9-157 or 9-159 occurs.

This conclusion does not impose an open-ended obligation on the Board (or the County for the County Contributions); the Pension Code places an outer

limit of five years on ordinary disability benefits. In O’Connell’s case, before terminating all benefits, the Board had expressly informed him that he would be entitled to ordinary disability benefits through approximately August 2021 based on his years of service. (Compl. ¶ 7, A15.) Adopting the Board’s construction in this suit would deprive O’Connell of the benefit period to which he is entitled, thus violating the principle that the Pension Code “must be liberally construed in favor of the rights of the pensioner,” *Carmichael*, 2018 IL 122793, ¶ 24, and “in such a way as to avoid ‘impractical or absurd results,’” *Dynak v. Bd. of Educ. of Wood Dale Sch. Dist. 7*, 2020 IL 125062, ¶ 27 (internal quotation marks and citations omitted).³

**C. The Circuit Court Misstated Article 9 and
Misapplied the Canons of Statutory Interpretation.**

The Circuit Court erred in accepting the Board’s argument that “employee” in Article 9 means only current employee and that, therefore, O’Connell was not entitled to the continuation of his disability benefits. In doing so the Circuit Court made several legal errors. First, it misquoted Article 9, stating that “Article 9 of the Pension Code is clear that an ‘employee’ who ‘is employed’ by the County is entitled to receive disability benefits under the

³ To be clear, interpreting “employee” to include former employees does not mean that employees who become disabled *after* withdrawing from service are eligible for disability benefits, except in limited circumstances where the employee returns to service. See, e.g., 40 ILCS 5/9-157 (“No employee who becomes disabled . . . during any period of absence from duty without pay may receive ordinary disability benefit until he recovers from such disability and [works] for at least 15 consecutive days . . .”).

Pension Code. 40 ILCS 5/9-108; 40 ILCS 5/9-197.” (Order at 7, A9 (emphasis added).) That is clearly wrong. Neither section cited by the Circuit Court contains the “is employed” language or otherwise limits “employee” to current employees. Nor does Section 9-157, the main provision at issue, which the Circuit Court likely intended to cite rather than Section 9-197 (which pertains to determining service credits).

In addition to inventing language not found in Article 9, the Circuit Court reasoned that disability benefits are unavailable to former employees because Article 9 “contains no definition for ‘former employee’ or ‘past employee’ or terminated employee.” (Order at 7, A9.) But such definitions are unnecessary in light of the most reasonable reading of the language at issue. Moreover, the lack of separate definitions in Article 9 for “former,” “past,” or “terminated” employees actually *supports* the broader interpretation of “employee” that includes former employees: Article 9 does not separately define categories of former employees because the term “employee” already includes them.⁴

The Circuit Court also cited the definition of “fireman” in Article 6 of the Pension Code to support its conclusion. (Order at 7, A9.) Article 6 defines

⁴ The Circuit Court also noted that Article 9 contains definitions for “present employee” and “future entrant.” (Order at 7, A9.) These definitions are irrelevant. Both define classes of employees based on their date of employment and when they began contributing to the Fund in relation to certain amendments to Article 9. *See* 40 ILCS 5/9-109; 40 ILCS 5/9-110.

“[f]ireman” as “[a]ny person who: (a) *was, is, or shall be* employed by a city” 40 ILCS 5/6-106 (emphasis added). But Article 6 is not (obviously) Article 9, which governs a different pension fund entirely.

Each article needs to be read with the rest of its provisions. Article 9’s definition of “employee” does not include “was, is, or shall be,” but the absence of those auxiliary verbs does not mean that the legislature intended for only one present tense verb (“is”) to apply. Indeed, Article 9 uses the past participle “employed” without any modifiers or auxiliary verbs, and without any temporal limitation. *See Bernal v. NRA Grp., LLC*, 930 F.3d 891, 896 (7th Cir. 2019) (silence in contract regarding timing of “any costs . . . incurred” strongly supports argument that “‘any’ should mean ‘any’ . . . includ[ing] costs incurred *at any time*”). Reading it to include former employees is the only way to make it consistent with other provisions of Article 9 that reference pension benefits paid to an “employee,” his or her family, or his or her estate; as discussed, these provisions (unambiguously) can only refer to former, as well as current, employees.

Even if the absence in Article 9 of the phrase “was, is, or shall be” (as used in Article 6) leaves the definition of “employee” ambiguous,⁵ under

⁵ *See, e.g., Ready v. United/Goedecke Servs., Inc.*, 232 Ill. 2d 369, 378 (2008) (holding that phrase “defendants sued by the plaintiff” was ambiguous); *id.* at 392-94 (Garman, J., dissenting) (use of past participle indicated that phrase meant all defendants against whom plaintiff filed suit and not just
...continued on next page

controlling case law any doubt is resolved in favor of the employees covered by the Article. This result is dictated by the rule that any ambiguity “must be liberally construed in favor of the rights of the pensioner.” *Carmichael*, 2018 IL 122793, ¶ 24; *accord Kanerva v. Weems*, 2014 IL 115811, ¶ 55. Here, that means construing “employee” in Section 9-157 to include former employees, such as O’Connell, who are terminated while receiving disability benefits. The Circuit Court ignored this rule, instead strictly and erroneously construing Article 9 against the rights of O’Connell, the disabled pensioner seeking approximately two years of disability benefits due to him based on his years of service to the County.

The Court should reverse the Circuit Court’s dismissal of Counts I, III, and V against the Board and the County.

III. There Is an “Actual Controversy” Between the County and O’Connell.

The Circuit Court dismissed Count I against the County for lack of an “actual controversy” between the County and O’Connell, reasoning that the County does not have the authority “to decide who is eligible to receive a disability pension, to grant such a pension or to terminate such a pension.” (Order at 3, A5.) But O’Connell seeks not just a determination that he is still

those remaining in the lawsuit at time of trial); *Bernal*, 930 F.3d at 895-96 (“A quick survey of judicial opinions confirms that the past participle is an uncommonly flexible device.”).

eligible for disability benefits despite his termination by the County, but also a declaration that the Board *and the County* must provide O'Connell the disability benefits owed to him. (Compl. ¶¶ 48-52, A23-24.)

Although Count I and Count III are primarily directed at the Board, the disability benefits O'Connell is entitled to receive include the County Contributions, which the County has stopped paying in violation of the Pension Code and the Pension Clause. (Compl. ¶¶ 43, 52, A22, A24.) The County has not conceded that it should pay the County Contributions, and it disputes that its failure to do so violates any law. But if continued employment is not required for the continuation of disability benefits, then the County is violating the Pension Clause by failing to pay the County Contributions to the County Pension Fund on O'Connell's behalf, and it must make the County Contributions going forward until O'Connell has exhausted his Years of Service Credit. Accordingly, the County and O'Connell have opposing interests and a live, concrete dispute creating an "actual controversy" between them sufficient to state a claim for declaratory judgment in Count I. *See Messenger v. Edgar*, 157 Ill. 2d 162, 170-71 (1993) ("The requirement of an actual controversy is meant only to distinguish justiciable issues from abstract or hypothetical disputes and is not intended to prevent the resolution of concrete disputes in which a definitive and immediate determination of the rights of the parties is possible."). Accordingly, the Circuit Court's dismissal of Count I against the County should be reversed.

IV. The Board Violated Due Process by Terminating O’Connell’s Disability Benefits without Any Process, Notice, or Hearing.

The Circuit Court dismissed O’Connell’s claim for violation of due process, alleged in Count V, based on its erroneous conclusion that O’Connell was not entitled to disability benefits “as a former employee of the County” and therefore did not have a “protectable interest” in the benefits for due-process purposes. (Order at 9, A11.) As discussed, however, O’Connell is entitled to the continuation of his disability benefits regardless of the termination of his employment by the County. Accordingly, he had a protected interest in those benefits and was entitled to due process before being deprived of them by the Board.

Kosakowski v. Board of Trustees of City of Calumet City Police Pension Fund, 389 Ill. App. 3d 381 (1st Dist. 2009), is instructive. There, the pension board had modified the plaintiff’s disability pension by issuing a letter announcing the reduction in his pension, contending that it had the statutory right to reduce the pension based on an error that had caused an overpayment. *Id.* at 383-84. The Appellate Court disagreed and affirmed the Circuit Court’s decision reversing the reduction in the pension. *Id.* at 386-87. It held that the Board could not modify a disability pension without notice and a hearing:

The receipt of a disability pension is a property right which cannot be diminished without procedural due process. *Wendl v. Moline Police Pension Board*, 96 Ill. App. 3d 482, 486-87, 51 Ill. Dec. 949, 421 N.E.2d 584 (1981). “The essence of procedural due process is meaningful notice and a meaningful opportunity to be heard.” *Trettenero v. Police Pension Fund of the City of Aurora*, 333 Ill. App. 3d 792, 799, 267 Ill. Dec. 468, 776 N.E.2d 840 (2002). In this

case, the Board afforded the plaintiff neither. Without notice and without a hearing, the Board unilaterally attempted to modify the disability pension which it had previously awarded to the plaintiff. *As a matter of due process, the Board should have provided the plaintiff with notice and an opportunity to be heard before modifying his pension. Moore v. Board of Trustees of the Sanitary District Employees' Annuity & Benefit Fund*, 157 Ill. App. 3d 158, 165-66, 109 Ill. Dec. 466, 510 N.E.2d 87 (1987).

Id. at 387 (emphasis added).

Here, as in *Kosakowski*, even if the Board believed its interpretation of the Pension Code was correct, that belief did not relieve it of its constitutional obligations to provide O'Connell notice and the opportunity to contest the termination of his disability benefits. Indisputably, the Board did not fulfill those obligations: It provided O'Connell no process, notice, or any hearing before or after it terminated his disability benefits. It provided no opportunity to submit any arguments for the Board's consideration before or after the discontinuation of his benefits. It did not even provide notice that it had terminated his disability benefits. The Board just stopped paying them. O'Connell became aware of the termination only because he called the Board. (Compl. ¶ 38, A21.) This shabby lack of any process violates the Fourteenth Amendment and § 1983, and the Circuit Court's order dismissing Count V should be reversed.

CONCLUSION

For the foregoing reasons, the Court should reverse the Circuit Court's ruling dismissing with prejudice Counts I, III, and V of O'Connell's complaint and remand with instructions to reinstate those counts. As the facts are

uncontested and receipt of pension benefits are vital to disabled persons like O'Connell, the Court should also order the Board and the County to pay O'Connell's remaining benefits and afford him the right to exercise the Credit Purchase Option and Early Annuity Option after he has exhausted his Years of Service Credits. The Court should grant such further relief as it deems proper.

Respectfully submitted,
John O'Connell,

By: /s/ Mary Eileen C. Wells
One of his attorneys

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 27 pages.

By: /s/ Mary Eileen C. Wells
Mary Eileen C. Wells
Counsel for John O'Connell

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on December 29, 2020, she caused a copy of the foregoing **Appellant's Opening Brief** to be filed electronically with the Clerk of the Illinois Appellate Court, First District, and to be served upon the following via Odyssey eFileIL and email:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing Certificate of Service are true and correct, except as to matters therein stated to be upon information and belief and as to such matters the undersigned certifies that she verily believes the same to be true.

Dated: December 29, 2020

/s/ Mary Eileen C. Wells
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September 29, 2021

In re: John O'Connell, Appellee, v. The County of Cook, Appellant.
Appeal, Appellate Court, First District.
127527

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

A handwritten signature in cursive script that reads "Carolyn Taft Gosbell".

Clerk of the Supreme Court

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JOHN O'CONNELL,)	
)	
Plaintiff,)	
)	
v.	)	20 CH 288
)	
COOK COUNTY and the BOARD OF)	
TRUSTEES OF THE COUNTY)	
EMPLOYEES' AND OFFICERS')	
ANNUITY AND BENEFIT FUND OF)	
COOK COUNTY,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

Defendant Board of Trustees of the County Employees' and Officers' Annuity and Benefit Fund of Cook County ("the Board") has filed a Motion to Dismiss Certain Counts of Plaintiff's Complaint and to Strike Portions of the Prayer for Relief pursuant to 735 ILCS 5/2-619.1.

Defendant Cook County ("the County") has filed a Motion to Dismiss Plaintiff's Complaint pursuant to 735 ILCS 5/2-619.1.

I. Background

Plaintiff John O'Connell has filed a Complaint for Declaratory Judgment, Mandamus and Violation of Civil Rights ("Complaint") against the Board and the County. Plaintiff alleges that he began employment with the County in 1999 and became a participant in the County Employees' and Officers' Annuity and Benefit Fund of Cook County ("Pension Fund"). In 2001, Plaintiff was diagnosed with multiple sclerosis. By the end of 2016, Plaintiff's health had deteriorated to the point where he could no longer work.

In 2017, Plaintiff took a leave of absence and applied to the Board for disability benefits under Article 9 of the Pension Code. The Board granted his application and also granted his subsequent applications for continuance of the disability benefits.

In May of 2019, the County sent a letter to Plaintiff requesting that he provide a return-to-work date. The letter informed Plaintiff that his employment would be terminated if he failed to provide a date. Plaintiff informed the County that he could not provide a date because he was unable to work. Plaintiff's employment was terminated on July 1, 2019.

Following the termination of Plaintiff's employment, the Board discontinued Plaintiff's disability payments. When Plaintiff contacted the Board for an explanation, he was informed that continued employment with the County was a requirement for the payment of disability benefits.

On July 24, 2019, Plaintiff, through counsel, sent a letter to Margaret Fahrenbach, the Board's legal advisor, requesting that Plaintiff's disability benefits be reinstated. Ms. Fahrenbach responded that the Board's position was that continued employment was necessary to receive disability benefits.

On August 7, 2019, Plaintiff, through counsel, sent a letter to County Human Resources requesting reinstatement of his employment so that he could continue to receive disability payments for the duration of time he was entitled to receive such benefits based on his years of service. On August 23, 2019, the County denied the request informing Plaintiff that the decision to administratively separate Plaintiff from his employment was unrelated to the Pension Fund, a separate legal entity.

On May 8, 2020, Plaintiff filed his Complaint. Count I asserts a claim for declaratory judgment against the County and the Board. Count I seeks declarations that: (1) continued employment with the County is not a requirement for receiving disability benefits; and (2) termination of Plaintiff's disability benefits violated the Pension Code and the Illinois Constitution.

Count II, pled in the alternative to Count I, asserts a claim for declaratory judgment against the County and the Board. Count II seeks a declaration that Plaintiff's administrative separation violated the Pension Code and Illinois Constitution.

Count III of the Complaint seeks a writ of *mandamus* ordering the Board to reinstate Plaintiff's disability benefits, retroactive to July 2, 2019, and the County to reinstate all contributions or benefits related to Plaintiff's disability benefits.

Count IV, pled in the alternative to Count III, seeks a writ of *mandamus* requiring the County to reinstate Plaintiff's employment, retroactive to July 2, 2019, and requiring the Board to reinstate Plaintiff's disability benefits, retroactive to July 2, 2019.

Count V alleges that the Board violated the Fourteenth Amendment of the United States Constitution and 42 U.S.C. §1983 because the Board terminated Plaintiff's disability benefits without a pre or post-deprivation hearing.

II. The County's Motion to Dismiss

The County is moving to dismiss the Complaint pursuant to 735 ILCS 5/2-619.1. "A section 2-615 motion to dismiss challenges the legal sufficiency of the complaint. Yoon Ja Kim v. Jh Song, 2016 IL App (1st) 150614-B, ¶41. "Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Id. "All well-pleaded facts and all reasonable inferences from those facts are taken as true. Where unsupported by allegations of

fact, legal and factual conclusions may be disregarded.” Kagan v. Waldheim Cemetery Co., 2016 IL App (1st) 131274, ¶29. “In determining whether the allegations of the complaint are sufficient to state a cause of action, the court views the allegations of the complaint in the light most favorable to the plaintiff. Unless it is clearly apparent that the plaintiff could prove no set of facts that would entitle him to relief, a complaint should not be dismissed.” Id.

A §2-619 motion to dismiss “admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action.” Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under §2-619 permits “the disposal of issues of law or easily proved facts early in the litigation process.” Id. Section 2-619(a)(9) authorizes dismissal where “the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9).

A. Count I (Declaratory Judgment)(§2-615)

Count I seeks declarations that continued employment is unnecessary to receive disability benefits and that the termination of Plaintiff’s disability benefits violated the Pension Code and the Illinois Constitution. To state a claim for declaratory judgment, the complaint must sufficiently allege: “(1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests.” Record-A-Hit v. National Fire Ins. Co., 377 Ill. App. 3d 642, 645 (1st Dist. 2007) quoting Behringer v. Page, 204 Ill. 2d 363, 372 (2003). A pleading that alleges sufficient facts to show an actual controversy between the parties and prays for a declaration of rights states a cause of action. Alderman Drugs, Inc. v. Metropolitan Life Ins. Co., 79 Ill. App. 3d 799, 803 (1st Dist. 1979).

The County contends that there is no actual controversy between the County and Plaintiff as to Count I. The court agrees. The Pension Code is clear that the Board is the entity authorized to carry out the provisions of the Pension Code. 40 ILCS 5/9-185. No provision of the Pension Code allows the County to decide who is eligible to receive a disability pension, to grant such a pension or to terminate such a pension. Only the Board possesses such authority. Therefore, Count I does not, and cannot, allege any actual controversy between the County and Plaintiff.

Count I is dismissed with prejudice as to the County.

B. Count II (Declaratory Judgment)(§2-615)

Count II, pled in the alternative, seeks a declaration that the County’s termination of Plaintiff’s employment violated the Pension Code and the Illinois Constitution. The County contends that Plaintiff had no right to continued employment with the County and, therefore, there is no tangible legal interest supporting declaratory relief. The County further argues that neither the Pension Code nor the Illinois Constitution provide that the County is obligated to maintain the employment of an employee receiving disability benefits.

Under Illinois law, a medical inability to work constitutes “a ‘legitimate nondiscriminatory reason’ for discharge.” Brummel v. Grossman, 2018 IL App (1st) 170516, ¶55 (internal citations omitted). “‘Illinois law does not obligate an employer to retain an at-will employee who is medically unable to return to his assigned position.’ Also, an employer is not obligated to reassign a disabled employee to another position rather than terminate his or her employment.” Id.

Under Illinois law, the County had the right to terminate Plaintiff’s employment based on his medical inability to return to work. While Plaintiff alleges that his termination was a violation of the Pension Code, Plaintiff does not identify any section of the Pension Code which prohibits a government employer from terminating the employment of an employee receiving disability benefits. An examination of the Pension Code reveals no such section.

Plaintiff further contends that his termination constituted a violation of the Pension Clause of the Illinois Constitution, but this is contrary to the case law. Article XIII, §5 of the Illinois Constitution of 1970 (“the Pension Clause”) provides that: “Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.” Ill. Const. 1970, art. XIII, §5. Pension benefits are protected under §5, whether those benefits were granted by statute or contract. Matthews v. Chicago Transit Authority, 2016 IL 117638.

The Illinois Supreme Court “has consistently held that the contractual relationship protected by [the Pension Clause] is governed by the actual terms of the contract or pension plan in effect at the time the employee becomes a member of the retirement system.” Matthews v. Chicago Transit Authority, 2016 IL 117638, ¶59. “While the pension protection clause guarantees the vested rights provided in the contract that defines a participants retirement system membership, it does not change the terms of that contract or the essential nature of the rights it confers.” ¶59.

Plaintiff’s disability benefits are only constitutionally protected to the extent of the vested benefits granted to him by statute or contract. Plaintiff has not identified any statute entitling him to employment with the County until his disability benefits are exhausted. Nor has Plaintiff alleged the existence of any enforceable contract pursuant to which the County agreed to continue his employment.

Because there is no statute or enforceable contract granting the Plaintiff the right to continued employment with the County while receiving disability benefits, the Complaint fails to allege any violation of the Pension Code. Furthermore, Illinois case law is clear that Plaintiff has no legal tangible interest in continued employment with the County. Therefore, Count II fails to state any viable claim against the County as a matter of law and must be dismissed with prejudice.

C. Counts III and IV (Mandamus)

1. Section 2-619(a)(9)

Count III, in part, seeks a writ of *mandamus* ordering the County to reinstate its contributions to the Pension Fund for Plaintiff's disability benefits. Count IV, pled in the alternative, seeks a writ of *mandamus* ordering the County to reinstate Plaintiff's employment until Plaintiff exhausts his disability benefits.

The County first contends that Counts III and IV should be dismissed because Plaintiff lacks standing. Standing requires an injury to a legally protected interest. Lombard Historical Comm'n v. Lombard, 366 Ill. App. 3d 715, 717 (2nd Dist. 2006). "To establish standing in a suit seeking a writ of mandamus, the complaining party must establish that there is a 'sufficiently protectable interest pursuant to statute or common law which is alleged to be injured.'" Cedarhurst of Bethalto Real Estate, LLC v. Vill. Of Bethalto, 2018 IL App (5th) 170309, ¶32.

As discussed above, Illinois law allows an employer to terminate the employment of an individual who is medically unable to perform his job duties. Plaintiff has failed to identify any contract or statute that would grant him the right to continued employment with the County. Nor has Plaintiff identified any contract or statute that requires the County to continue making contributions for disability benefits following his termination. Therefore, Plaintiff possesses no protectable interest under either statute or common law which was injured by the termination of his employment and the cessation of the County's contributions to the Pension Fund.

Plaintiff has no standing to seek a writ of *mandamus* against the County. Therefore, Counts III and IV are dismissed with prejudice as to the County.

2. Section 2-615

The County also contends that Counts III and IV should be dismissed pursuant to §2-615 because Plaintiff does not, and cannot, allege any facts showing that he has a right to continued employment with the County. The court agrees.

A party seeking *mandamus* must show a clear right to the relief sought. Noyola v. Bd. of Ed., 179 Ill. 2d 121, 133 (1997). As discussed above, Plaintiff had no right to continued employment with the County under common law and Plaintiff has not identified any statute or contract giving him a right to continued employment. Nor has Plaintiff identified any statute or contract requiring the County to continue making contributions on his behalf to the Pension Fund following the termination of his employment. Therefore, Plaintiff has no clear right to the relief sought against the County in Counts III and IV.

Counts III and IV are dismissed with prejudice pursuant to §2-615.

III. The Board's Motion to Dismiss

The Board is moving to dismiss the Complaint pursuant to 735 ILCS 5/2-619.1.

A. Section 2-619

The Board contends that all of Plaintiff's claims against it fail as a matter of law because Plaintiff had no legal right to disability payments following his termination. The Board asserts that the Pension Code does not provide for disability benefits to be paid to former employees.

1. Applicable Statutes

Section 9-157 of the Pension Code provides in relevant part as follows:

An employee . . . who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof.

* * *

Ordinary disability benefit shall be 50% of the employee's salary at the date of disability. Instead of all amounts ordinarily contributed by an employee and by the county for age and service annuity and widow's annuity based on the salary at date of disability, the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is deemed for annuity and refund purposes as amounts contributed by him. The county shall also contribute ½ of 1% salary deductions required as a contribution from the employee under Section 9-133.

An employee who has withdrawn from service or was laid off for any reason, who is absent from service thereafter for 60 days or more who re-enters the service subsequent to such absence is not entitled to ordinary disability benefit unless he renders at least 6 months of service subsequent to the date of such last re-entry.

40 ILCS 5/9-157.

Section 9-108 of the Pension Code provides that the following "employees" are entitled to benefits under the Pension Code:

(a) Any employee of the county employed in any position in the classified civil service of the county, or in any position under the County Police Merit Board as a deputy sheriff in the County Police Department. * * *

(b) Any employee of the county employed in any position not included in the classified civil service of the county whose salary or wage is paid in whole or in part by the county
* * *

(c) Any county officer elected by vote of the people, including a member of the county board, when such officer elects to become a contributor.

(d) Any person employed by the board.

(e) Employees of a County Department of Public Aid in counties of 3,000,000 or

40 ILCS 5/9-108.

2. Statutory Interpretation

“[T]he primary objective . . . in construing the meaning of a statute is to ascertain and give effect to the intention of the legislature.” In re Detention of Lieberman, 201 Ill. 2d 300, 307 (2002). “All other rules of statutory construction are subordinate to this cardinal principle. Id. “When the language of a statute is clear and unambiguous, a court must give effect to the plain and ordinary meaning of the language without resort to other tools of statutory construction.” Raintree Homes, Inc. v. Village of Long Grove, 209 Ill. 2d 248, 255 (2004).

“One of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole. Words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute.” Id. at 255-56, quoting, Michigan Ave. Nat’l Bank v. County of Cook, 191 Ill. 2d 493, 504 (2000). A court must construe a statute “so that each word, clause or sentence is given reasonable meaning and not deemed superfluous.” Id. at 256.

3. Whether a Former Employee is Entitled to Receive Disability Benefits

The Board contends that Plaintiff no longer had any right to collect disability benefits once his employment with the County was terminated. Article 9 of the Pension Code is clear that an “employee” who “is employed” by the County is entitled to receive disability benefits under the Pension Code. 40 ILCS 5/9-108; 40 ILCS 5/9-197. The Pension Code does not, however, contain any language which would support the continuance of disability benefits following termination of employment. Nor does the Pension Code contain any language defining a former employee as an “employee” for purposes of disability benefits.

Additionally, while Article 9 of the Pension Code contains definitions for “employee,” “present employee,” and “future entrant,” 40 ILCS 5/9-108; 40 ILCS 5/9-109; 40 ILCS 5/9-110, it contains no definition for “former employee” or “past employee” or “terminated employee.” Plaintiff has not identified any section of Article 9 of the Pension Code which supports the payment of disability benefits to a person no longer employed by the County.

The court further notes that where the legislature has intended former employees to be eligible to receive benefits, the legislature has clearly used such language. See, e.g., 40 ILCS 5/6-106 (defining a “fireman” as “any person who (a) *was*, is or shall be employed by a City”)(emphasis added). The definitions of Article 9 contain no such language. A court should

presume that when the legislature uses certain language in one part of a statute and different language in another part, different meanings were intended. People v. Davis, 2012 IL App (2d) 100934, ¶14; Gutraj v. Bd. Of Trustees of Police Pension Fund of Vill. of Grayslake, Illinois, 2013 IL App (2d) 121163, ¶8.

Finally, Article 9 of the Pension Code defines a “disability” as “a physical or mental incapacity as the result of which *an employee* is unable to perform the duties of his position.” 40 ILCS 5/9-113 (emphasis added). Section 9-113 does not include former employees within this definition of disability.

Article 9 of the Pension Code is clear that a person must be employed by the County to receive disability benefits. This is a necessary threshold to receiving disability benefits. Plaintiff has failed to identify any statutory provision providing otherwise. Nor has Plaintiff identified any case law holding that he is entitled to receive disability benefits as a former employee. Therefore, upon the County’s termination of his employment, Plaintiff was no longer entitled to receive disability benefits under the Pension Code.

While Plaintiff argues that benefits can only be terminated under certain circumstances, 40 ILCS 5/9-157, §9-157 of the Pension Code addresses triggering events that terminate an *employee’s* benefits. Plaintiff is not an employee and, therefore, not entitled to receive any benefits.

As discussed above in connection with the County’s motion to dismiss, Plaintiff had no right to continued employment with the County and there is no legal basis for ordering the reinstatement of his employment. Therefore, Plaintiff can only prevail on his claims against the Board in Counts I, II, III and IV of the Complaint if a former employee is entitled to receive disability benefits. As Article 9 of the Pension Code does not provide for the payment of disability benefits to former employees, Counts I, II, III and IV fail as a matter of law.

The Pension Clause of the Illinois Constitution cannot save Plaintiff’s claims. The Pension Clause does not create any additional rights, but protects only those rights granted by contract or statute. Matthews v. Chicago Transit Authority, 2016 IL 117638, ¶59. There is no contract or statute that grants a former County employee the right to receive disability benefits.

Counts I, II, III and IV are dismissed with prejudice pursuant to §2-619.

B. Section 2-615

The Board also contends that Plaintiff’s claims should be dismissed pursuant to §2-615.

1. Counts I and II (Declaratory Judgment)

Counts I and II seek declaratory judgment against the Board. In order to maintain an action for declaratory judgment, a plaintiff must possess a legal tangible interest. Record-A-Hit, 377 Ill. App. 3d at 645. As a former employee of the County, Plaintiff has no legal tangible

interest in continuing disability benefit payments. Therefore, Counts I and II fail to state a claim as a matter of law.

2. Counts III and IV (Mandamus)

Counts III and IV of the Complaint seek writs of *mandamus* against the Board. In order to maintain an action for a writ of *mandamus*, a plaintiff must have a protectable legal interest and a clear right to the relief sought. Lombard Historical Comm'n, 366 Ill. App. 3d at 717; Noyola, 179 Ill. 2d at 133. As a former employee of the County, Plaintiff has no protectable legal interest in receiving disability benefits and no clear right to such benefits. Therefore, Counts III and IV fail to state a claim as a matter of law.

3. Count V (Violation of the Fourteenth Amendment and §1983).

Count V of the Complaint alleges that the termination of his disability benefits by the Board without any hearing violated Plaintiff's right to due process under the Fourteenth Amendment of the U.S. Constitution and constituted a violation of 42 U.S.C. §1983. In order to be entitled to procedural due process, a plaintiff must possess a protectable interest in the form of life, liberty or property. Chicago Teachers Union Local No.1 v. Board of Educ., 2012 IL 112566, ¶12; Balmoral Racing Club, Inc. v. Illinois Racing Bd., 151 Ill. 2d 367, 405 (1992); Jackson v. City of Chicago, 2012 IL App (1st) 111044. If there is no protectable interest, there is no due process claim. Id.

"[A] property interest is involved only if 'a person clearly [has] more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.'" Petersen v. Chicago Plan Comm'n v. City of Chicago, 302 Ill. App. 3d 461, 467 (1st Dist. 1998), quoting, Board of Regents v. Roth, 408 U.S. 564, 577 (1972).

As discussed above, Plaintiff has no legitimate claim of entitlement to disability benefits as a former employee of the County. Therefore, he was not entitled to any procedural due process and cannot maintain a claim under the Fourteenth Amendment or §1983.

4. Requests for Attorney's Fees

Finally, the Board argues that there is no legal basis for the requests for attorney's fees made in Counts I, II, III and IV. While this issue is moot given that Counts I, II, III and IV fail as a matter of law, the Board is correct.

IV. Conclusion

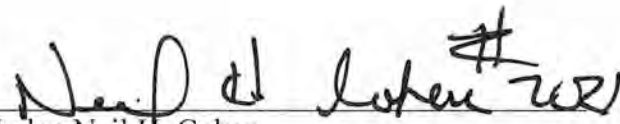
The County's Motion to Dismiss is granted with prejudice pursuant to §2-619 and §2-615.

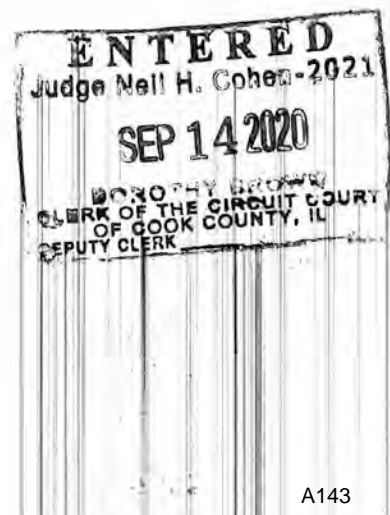
The Board's Motion to Dismiss is granted with prejudice pursuant to §2-619 and §2-615.

The status date of September 28, 2020 is stricken.

This order is final and appealable.

Enter: 9.14.20


Judge Neil H. Cohen



any unit of local government or school district of the State, ‘it cannot be diminished or impaired.’” *Carmichael v. Laborers’ & Retirement Bd. Employees’ Annuity & Benefit Fund*, 2018 IL 122793, ¶ 25 (citation omitted). This includes all pension benefits that flow directly from membership, including disability coverage.

4. O’Connell is caught in a catch-22 because of the actions of the Board and the County. The Board asserts that it terminated O’Connell’s disability benefits because the County refused to continue his status as an employee. The County refused to continue O’Connell’s status as an employee because he cannot return to work, which is inevitable for an individual like O’Connell who is completely disabled.

5. The Pension Code does not require O’Connell’s continued status as an employee to be eligible for the continuation of disability benefits. Terminating his disability benefits violates the Pension Code and the Pension Clause. In the alternative, the County’s termination of O’Connell violated the Pension Code and Pension Clause because it caused the termination of the disability benefits to which he is entitled. Additionally, the termination of O’Connell’s disability benefits without any notice or an opportunity to be heard violated O’Connell’s right to procedural due process.

SUMMARY OF ACTION

6. O’Connell began employment with the County in 1999 and became a participant in the County Employees’ and Officers’ Annuity and Benefit Fund (the “**County Pension Fund**”). In 2001, while working for the County, O’Connell was diagnosed with multiple sclerosis (“**MS**”). He worked for a number of years with accommodations as his health declined, until the end of 2016 when his health had degenerated to the point that he could no longer work.

7. Unable to work, O'Connell took a leave from his position with the County in early 2017 and applied to the Board for the disability benefits that he was promised under the Pension Code. The Pension Code guaranteed O'Connell disability benefits for a period of time (not to exceed five years) based on his years of service if he met certain criteria. O'Connell met the eligibility criteria. The Board, which administers disability benefits under the Pension Code, granted his application for disability benefits and his subsequent applications for the continuation of disability benefits. A representative of the Board has told O'Connell that based on his years of service, he was eligible to receive disability benefits until approximately August 2021.

8. In May 2019, shortly after the Board approved O'Connell's most recent application for the continuation of disability benefits, the County sent O'Connell a letter demanding that he provide a return-to-work date and threatening administrative separation should he fail to provide one. O'Connell contacted the Board and was told that it would end his disability benefits if the County terminated him. O'Connell told the County that he could not provide a return-to-work date because he was unable to work. He asked that the County continue his employment status for the period of time for which he was eligible to receive disability benefits. The County refused, disclaiming any role in the Board's administration of disability benefits, and administratively separated O'Connell on July 1, 2019.

9. Following O'Connell's administrative separation, the Board stopped paying him disability benefits without any notice. O'Connell called the Board, a representative of which told O'Connell that continued employment with the County is required for the continuation of disability benefits.

10. The Board is wrong. Nothing in the Pension Code imposes that requirement. The Board's termination of O'Connell's disability benefits on that basis violated the Pension Code and Article XIII, Section 5 of the Illinois Constitution.

11. In the alternative, if continued employment with the County is required for the continuation of disability benefits, the County's administrative separation of O'Connell before the end of the period in which he is entitled to receive disability benefits violated the Pension Code and Article XIII, Section 5 of the Illinois Constitution.

12. The Board's termination of O'Connell's disability benefits without notice or an opportunity to be heard also deprived O'Connell of his right to procedural due process guaranteed to him by the U.S. Constitution and in violation of 42 U.S.C. § 1983.

PARTIES

13. Plaintiff O'Connell is an individual who was an employee of the County from 1999 through July 2019 and a contributor to the County Pension Fund.

14. Defendant Board is a board of trustees created and governed by Article 9 of the Pension Code. The Board is authorized to carry out the Pension Code's provisions related to the County Pension Fund. 40 ILCS 5/9-185. Its powers and duties include "authoriz[ing] or suspend[ing] the payment of any annuity or benefit in accordance with" the Pension Code. 40 ILCS 5/9-196.

15. Defendant County is a governmental entity within the State of Illinois. The County employed O'Connell from 1999 through 2019.

JURISDICTION AND VENUE

16. The Court has subject matter jurisdiction for violations of the Illinois Constitution and violation of the Illinois Pension Code, 40 ILCS 5/1-115.

17. Venue is proper in the Circuit Court of Cook County, Illinois, pursuant to 735 ILCS 5/2-101, in that, among other things, the transactions, or some part thereof, out of which the causes of action arose, occurred in Cook County, Illinois.

ALLEGATIONS

Disability Benefits under the Pension Code

18. Article 9 of the Pension Code established the County Pension Fund and sets forth the pension, disability, and other benefits for employees of the County and the Forest Preserve District of Cook County. 40 ILCS 5/9-101 *et. seq.*

19. The Pension Code provides for two types of disability benefits, “duty disability benefits” for employees who are disabled as a result of an injury that occurs while working, and “ordinary disability benefits” for employees who become disabled as a result of a cause other than an injury while working.

20. As relevant here regarding “ordinary disability benefit,” the Pension Code provides:

An employee . . . who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof.

40 ILCS 5/9-157.

21. Under the Pension Code, “[e]mployee[,]” “contributor[,]” and “participant” have the same definition. 40 ILCS 5/9-108.

22. There are at least three benefits guaranteed to a disabled employee under the Pension Code while collecting disability benefits. First, the Board issues payments to disabled employees from the County Pension Fund in the amount of “50% of the employee’s salary at the

date of disability.” 40 ILCS 5/9-157. The payments provided for in Section 9-157 as part of the disability benefits are referred to herein as the “**Disability Benefit Payments.**”

23. Second, the Pension Code requires that the County contribute on behalf of the disabled employee to the County Pension Fund:

Instead of all amounts ordinarily contributed by an employee and by the county for age and service annuity and widow’s annuity based on the salary at date of disability, the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is deemed for annuity and refund purposes as amounts contributed by him. The county shall also contribute ½ of 1% salary deductions required as a contribution from the employee under Section 9-133.

40 ILCS 5/9-157.

24. Third, the County must also “contribute all amounts ordinarily contributed by it for annuity purposes for any employee receiving ordinary disability benefit as though he were in active discharge of his duties during such period of disability.” 40 ILCS 5/9-181. The contributions by the County required by Sections 9-157 and 9-181 are referred to herein as the “**County Contributions.**”

25. The Pension Code also provides at least two additional benefits if an employee has exhausted his credits for disability benefits and continues to be disabled. First, he “shall have the right to contribute to the fund at the current contribution rate for a period not to exceed a total of 12 months during his entire period of service and to receive credit for all annuity purposes for any such periods paid for.” 40 ILCS 5/9-174. This disability benefit is referred to herein as the “**Credit Purchase Option.**”

26. Second, if the employee has exhausted his credits for disability benefits and withdraws before age 60 while still disabled, he “is entitled to receive the annuity provided from the total sum accumulated to his credit from employee contributions and county contributions to

be computed as of his age on the date of withdrawal.” 40 ILCS 5/9-160. This disability benefit is referred to herein as the “**Early Annuity Option.**”

27. There are five dates set forth in Section 9-157 of the Pension Code upon which the disability benefits “shall cease”:

- (a) the date disability ceases.
- (b) the date the disabled employee attains age 65 for disability commencing prior to January 1, 1979.
- (c) the date the disabled employee attains 65 for disability commencing prior to attainment of age 60 in the service and after January 1, 1979.
- (d) the date the disabled employee attains the age of 70 for disability commencing after attainment of age 60 in the service and after January 1, 1979.
- (e) the date the payments of the benefit shall exceed in the aggregate, throughout the employee’s service, a period equal to $\frac{1}{4}$ of the total service rendered prior to the date of disability but in no event more than 5 years. In computing such total service any period during which the employee received ordinary disability benefit and any period of absence from duty other than paid vacation shall be excluded.

40 ILCS 5/9-157. Subsection (e) of Section 9-157 is referred to herein as the “**Years of Service Credits.**”

28. Additionally, the disability benefits are “not payable” if the disabled employee (a) refuses to submit to an examination by a board-appointed physician; (b) receives any part of his salary, or while employed by any public body supported in whole or in part by taxation; or (c) receives certain payments from the County under the Workers’ Compensation Act or Workers’ Occupational Diseases Act. 40 ILCS 5/9-159.

The County and the Board’s Premature Termination of O’Connell’s Disability Benefits

29. O’Connell started employment with the County in the summer of 1999. As an employee of the County, O’Connell was a contributing member of the County Pension Fund.

30. While employed by the County, O'Connell was diagnosed with MS. After working for several years with accommodations, O'Connell became unable to work due to his MS at the end of 2016. Among other symptoms, O'Connell could no longer stand or walk and suffered from extreme fatigue.

31. O'Connell exhausted his accrued paid leave and took a leave from his position with the County in January 2017. He applied for and began receiving disability benefits from the County Pension Fund.

32. O'Connell was and is entitled to receive disability benefits, including Disability Benefit Payments and County Contributions, until the end of his Years of Service Credits, because none of the other events set forth in Sections 9-157 (quoted in ¶ 27 above) applies or will apply to him.

33. His disability has not and will not cease, and he will not meet the conditions set forth in Section 9-157 (b)-(d). 40 ILCS 5/9-157(a)-(e). The three circumstances in Section 5/9-159 (quoted in ¶ 28 above) in which disability benefits are "not payable" likewise do not apply to O'Connell.

34. Upon information and belief, based on his Years of Service Credits, O'Connell was eligible for disability benefits through approximately August 2021. At the end of that period, he would be entitled to the Early Annuity Option and Credit Purchase Option.

35. Under the Pension Code, a disabled employee must periodically re-apply for the continuation of disability benefits. O'Connell has done so, and the Board has approved all of his applications. Most recently, on May 2, 2019, the Board granted O'Connell's application for a continuation of disability benefits through November 30, 2019. (Exhibit A.)

36. Two weeks later, on May 16, 2019, Simone McNeil, Deputy Bureau Chief for Cook County's Bureau of Human Resources ("**County Human Resources**"), sent O'Connell a letter requesting that he provide medical documentation indicating his expected return to work date. (Exhibit B.) The letter stated that the County would administratively separate O'Connell on May 29, 2019, if he did not provide the requested documentation or if was not released to return to work. (*Id.*)

37. O'Connell was surprised to receive this letter as he does not recall receiving any request from the County regarding a return-to-work date before the May 16, 2019 letter, and he had previously informed his department and County Human Resources that he would be unable to return to work. Additionally, the "Disability Provisions" of the Cook County Personnel Rules state that an employee need only notify their department heads of their readiness to return to work "before the termination dates of their disability leaves[.]" (Exhibit C at 43 (excerpt)), and the Board had just determined that O'Connell was entitled to receive disability benefits through at least November 30, 2019 (and was entitled to apply for disability benefits for a period of time after November 30, 2019 based on his years of service), (Exhibit A).

38. After receiving this letter, O'Connell called the Board to ask about the impact of his potential administrative separation on his ability to receive disability benefits. A representative of the Board told O'Connell that his disability benefits would end if the County terminated him as an employee.

39. O'Connell was unable to provide the documentation County Human Resources requested because he is unable to return to work. By a letter dated May 23, 2019, O'Connell informed County Human Resources that he could not provide the requested documentation and that the Board had recently approved his application to receive disability benefits through

November 30, 2019. (Exhibit D.) He also told County Human Resources that a representative of the Pension Fund had told him that his disability benefits would end upon the termination of his employment with the County. O'Connell requested that his employment be continued for the duration of the period in which he was entitled to collect disability benefits based on his years of service. (*Id.*)

40. McNeil responded in a letter dated June 13, 2019. (Exhibit E.) She stated that "all determinations regarding [O'Connell's] disability benefits fall solely within the discretion of the Pension Fund, which is a separate legal entity from the Cook County Offices under the President, [O'Connell's] employer." (*Id.*) McNeil again asked Mr. O'Connell to provide documentation indicating his return to work date and gave him until June 29, 2019, to do so.

41. O'Connell remained unable to provide the requested documentation because of his disability and was administratively separated effective July 1, 2019, by a letter from McNeil dated July 3, 2019. (Exhibit F.)

42. Following his administrative separation, O'Connell received a check from the Pension Fund with disability payments for one day of July. He did not receive any notification from the Pension Fund that his disability benefits were terminated.

43. Upon information and belief, the County has ceased making the County Contributions provided for in the Pension Code as part of the disability benefits.

44. Because O'Connell did not reach the end of the period of time in which he would be eligible to receive disability benefits based on his years of service, he was not provided the Credit Purchase Option or the Early Annuity Option.

45. On July 24, 2019, O'Connell, through counsel, sent Margaret Fahrenbach, Legal Advisor to the Board, a letter objecting to the termination of his disability benefits and requesting

their reinstatement. Fahrenbach responded that the Board's position is that continued employment status is required for the continuation of disability benefits. However, she also said that O'Connell's request was being reviewed by outside counsel. Despite repeated requests over several months, the Board has not provided a response to O'Connell's request for reinstatement of his disability benefits as of the date of the filing of this Complaint.

46. On August 7, 2019, O'Connell, through counsel, sent a letter to County Human Resources requesting reinstatement of his employment with the County so that he could continue to receive disability benefits for the duration of the period of time he was entitled to disability benefits based on his years of service. By a letter dated August 23, 2019, Velisha Haddox, the Bureau Chief of County Human Resources, denied the request, stating that "[t]he Bureau's decision to administratively separate Mr. O'Connell is unrelated to the Cook County Pension and Annuity Fund, a separate legal entity from Cook County Offices Under the President." (Exhibit G.)

COUNT I

Declaratory Judgment And Other Relief Against the Board and the County

47. O'Connell restates and incorporates the allegations in Paragraphs 1 through 46 as if fully set forth herein.

48. O'Connell seeks a determination pursuant to 735 ILCS 5/2-701 that (i) continued employment with the County is not required under the Pension Code for the continuation of disability benefits; and (ii) Defendants' termination of O'Connell's disability benefits violated the Pension Code and the Illinois Constitution.

49. There exists an actual, immediate, and justiciable dispute between O'Connell, on the one hand, and Defendants, on the other hand, as required under 735 ILCS 5/2-701, because

Defendants have ceased providing O'Connell disability benefits based on the termination of his employment with the County in violation of the Pension Code and the Illinois Constitution.

50. As set forth above, a disabled employee "is entitled to ordinary disability benefit during such disability" unless one of the events in Sections 9-157 and 9-159 causing the termination of disability benefits occurs. Neither section states that the termination of employment causes disability benefits to "cease" or become "not payable." There is no basis in the Pension Code for the Board's requirement for continued employment with the County for the continuation of disability benefits, and any such rule or requirement is null and void. It also defies common sense because a person who is completely disabled cannot work, yet disability benefits are plainly intended for such persons by the Pension Code.

51. As set forth above, absent the Board's "continued-employment" requirement, O'Connell would continue to receive disability benefits until the end of his Years of Service Credits. Upon information and belief, at the time O'Connell's disability benefits were terminated, he was eligible to receive disability benefits, including Disability Benefit Payments and County Contributions, for approximately two more years. At the end of that period, he would be entitled to the Early Annuity Option and Credit Purchase Option.

52. Defendants' termination of O'Connell's disability benefits violated the Pension Code and the Illinois Constitution because they deprived O'Connell of the disability benefits to which he was entitled, including Disability Benefit Payments, County Contributions, the Early Annuity Option, and the Credit Purchase Option.

WHEREFORE, O'Connell respectfully prays that this Court enter judgment:

- A. Declaring that continued employment with the County is not required under the Pension Code for the continuation of disability benefits;
- B. Declaring that Defendants' termination of O'Connell's disability benefits due to the termination of his employment with the County violated the Pension Code and the Illinois Constitution;
- C. Ordering Defendants to provide O'Connell disability benefits effective retroactively to July 2, 2019, until one of the specifically enumerated events in 40 ILCS 5/9-157(a)-(e) or 40 ILCS 5/9-159 occurs;
- D. Awarding O'Connell interest, including equitable interest, and attorneys' fees and costs; and
- E. Granting O'Connell such further relief as the Court deems just and proper.

COUNT II¹

Declaratory Judgment And Other Relief Against the County and the Board

53. O'Connell restates and incorporates the allegations in Paragraphs 1 through 46 as if fully set forth herein.

54. Because the Board requires continued employment with the County for the continuation of disability benefits, the County's administrative separation of O'Connell violated the Illinois Pension Code, 40 ILCS 5/9-101 et seq., and the Pension Protection Clause, Article XIII, Section 5, of the Illinois Constitution because of its known effect on O'Connell's disability benefits.

¹ Count II is pleaded in the alternative to Count I.

55. As set forth above, if O'Connell were still employed by the County, O'Connell would be eligible to continue to receive disability benefits until the end of his Years of Service Credits, even though he could not physically provide services as an employee. Upon information and belief, at the time O'Connell's disability benefits were terminated, he was eligible to receive disability benefits, including Disability Benefit Payments and County Contributions, for approximately two more years. At the end of that period, he would be entitled to the Early Annuity Option and Credit Purchase Option.

56. Cook County's administrative separation of O'Connell caused the immediate termination of the disability benefits to which he would otherwise be entitled, including Disability Benefit Payments, County Contributions, the Early Annuity Option, and the Credit Purchase Option, thereby "diminish[ing] or impair[ing]" O'Connell's right to disability benefits under the Pension Code.

WHEREFORE, O'Connell respectfully prays that this Court enter judgment:

- A. Declaring that the County's administrative separation of O'Connell violated the Pension Code and the Illinois Constitution;
- B. Ordering the County to reinstate O'Connell as a County employee, effective retroactively to July 2, 2019, until he is no longer eligible to receive disability benefits under the Pension Code, and granting him all of the benefits attendant to employment with County;
- C. Ordering Defendants to provide O'Connell disability benefits effective retroactively to July 2, 2019, until one of the specifically enumerated events in 40 ILCS 5/9-157(a)-(e) or 40 ILCS 5/9-159 occurs;

- D. Awarding O'Connell interest, including equitable interest, and attorneys' fees and costs; and
- E. Granting O'Connell such further relief as the Court deems just and proper.

COUNT III

Mandamus Against the Board and the County

57. O'Connell restates and incorporates the allegations in Paragraphs 1 through 52 as if fully set forth herein.

58. There is no provision in the Pension Code that requires the termination of disability benefits upon the termination of a disabled employees' employment with the County.

59. Defendants have no discretion to deny O'Connell continued disability benefits based on his employment status with the County.

60. O'Connell has requested, and Defendants have refused, to reinstate his disability benefits.

61. O'Connell has a clear right to continue to receive disability benefits under the Pension Code and the Illinois Constitution.

62. The Defendants have a clear duty to provide O'Connell the disability benefits to which he is entitled and the clear authority to do so under the Pension Code and Illinois Constitution.

WHEREFORE, O'Connell respectfully prays that this Court enter judgment:

- A. Issuing a writ of *mandamus* ordering
 - i. The Board to reinstate O'Connell's disability benefits effective retroactively to July 2, 2019, including the Disability Benefit Payments and any other benefits to which he is entitled under the Pension Code; and

- ii. The County to reinstate all contributions or benefits related to O'Connell's disability benefits, including the County Contributions, effective retroactively to July 2, 2019;
- B. Awarding O'Connell interest, and equitable interest, and attorneys' fees and costs; and
- C. Granting O'Connell such further relief as the Court deems just and proper.

COUNT IV²

Mandamus Against the County and the Board

63. O'Connell restates and incorporates the allegations in Paragraphs 1 through 46 and 53 through 56 as if fully set forth herein.

64. Because the Board requires continued employment with the County for the continuation of disability benefits, the County must maintain O'Connell in employed status until he is no longer eligible to receive disability benefits under the Pension Code.

65. The County has no discretion to refuse to maintain O'Connell's employed status while he is receiving disability benefits.

66. O'Connell has requested, and the County has refused, to reinstate him as a County employee.

67. O'Connell has requested, and Defendants have refused, to reinstate his disability benefits.

68. O'Connell has a clear right to remain an employee of the County in order to continue to receive disability benefits to which he is entitled under the Pension Code and the Illinois Constitution.

² Count IV is pleaded in the alternative to Count III.

69. The County has a clear duty to maintain O'Connell as an employee and Defendants have a clear duty to provide O'Connell the disability benefits to which he is entitled and the clear authority to do so under the Pension Code and Illinois Constitution.

WHEREFORE, O'Connell respectfully prays that this Court enter judgment:

- A. Issuing a writ of *mandamus* ordering
 - i. The County to reinstate O'Connell as a County employee, effective retroactively to July 2, 2019, until he is no longer eligible to receive disability benefits under the Pension Code;
 - ii. The Board to reinstate O'Connell's disability benefits effective retroactively to July 2, 2019, including the Disability Benefit Payments and any other benefits to which he is entitled under the Pension Code; and
 - iii. The County to reinstate all contributions and benefits related to O'Connell's disability benefits, including the County Contributions, effective retroactively to July 2, 2019;
- B. Awarding O'Connell interest, including equitable and attorneys' fees and costs; and
- C. Granting O'Connell such further relief as the Court deems just and proper.
- D. costs; and
- E. Granting O'Connell such further relief as the Court deems just and proper.

COUNT V**Violation of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983****Against the Board**

70. O'Connell restates and incorporates the allegations in Paragraphs 1 through 69 as if fully set forth herein.

71. O'Connell had a protected property interest in his disability benefits.

72. The Board terminated O'Connell's disability benefits without a pre- or post-deprivation hearing, guaranteed to him by the U.S. Constitution and in violation of 42 U.S.C. § 1983, and deprived him of rights guaranteed to him under the Due Process Clause of the Fourteenth Amendment.

73. O'Connell has suffered damages as a result.

WHEREFORE, O'Connell respectfully prays that this Court grant O'Connell the following relief on Count V:

- A. Judgment for compensatory damages in an amount to be determined at trial;
- B. An order requiring Defendants to provide O'Connell disability benefits until one of the specifically enumerated events in 40 ILCS 5/9-157(a)-(e) or 40 ILCS 5/9-159 occurs;
- C. An award of the costs of this action, including reasonable attorney's fees, in accordance with 42 U.S.C. § 1988; and
- D. Any other relief that this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury of all claims and/or issues triable by a jury.

Respectfully submitted,

JOHN O'CONNELL

By: /s/ Michael L. Shakman
One of his attorneys

Michael L. Shakman
Mary Eileen C. Wells
Miller Shakman Levine & Feldman LLP
180 North LaSalle Street
Suite 3600
Chicago, IL 60601
(312) 236-3700
Firm ID: 90236

EXHIBIT A



May 2, 2019

Office #152896

JOHN R O'CONNELL
1120 LAS BRISAS DR
MINDEN, NV 89423-4244

Dear Sir/Madam:

Your application for a continuation of ordinary disability benefits was presented to the Retirement Board on May 2, 2019. Your request for ordinary disability benefits was granted by the Board.

Your Benefits Information

- Your ordinary disability benefits payment period is December 1, 2018 through November 30, 2019 at a rate of \$125.96 per day.
- The amount of the full ordinary disability benefits is equal to 50% of your salary at the date of injury/illness.
- To continue these benefits beyond the dates specified, you must request and complete a "continuation of benefits" application.

Enclosed is the payment for disability benefits now due. Any future payments will be mailed on the last day of the month. If the last day of the month falls on a weekend, the check will be mailed the last business day of the month.

Regards,

Disability Benefits Department
DMD



County Employees' and Officers' Annuity and Benefit Fund of Cook County
Forest Preserve District Employees' Annuity and Benefit Fund of Cook County
70 W Madison St, Suite 1925 | Chicago, IL 60602 | 312.603.1200 | 312.603.9760 fax
www.cookcountypension.com | info@countypension.com

DIS0010AOD
04/13

EXHIBIT B



BUREAU OF HUMAN RESOURCES

VELISHA L. HADDOX

BUREAU CHIEF

118 North Clark Street, Room 840 • Chicago, Illinois 60602 • (312) 603-3300

TONI PRECKWINKLE

PRESIDENT

**Cook County Board
of Commissioners**

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DENNIS DEER

2nd District

BILL LOWRY

3rd District

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BRIDGET DEGNEN

12th District

LARRY SUFFREDIN

13th District

SCOTT R. BRITTON

14th District

KEVIN B. MORRISON

15th District

JEFFREY R. TOBOLSKI

16th District

SEAN M. MORRISON

17th District

May 16, 2019

John O'Connell
1120 Las Brisas Drive
Minden, Nevada 89423

Re: Expected Return to Work Date

Dear Mr. O'Connell,

You have been away from work on a medical leave of absence since 01-10-2017 with no projected return to work date. By May 29, 2019 you are required to please provide medical documentation indicating your expected return to work date to Renee Carrion, Personnel Services Manager. Ms. Carrion's contact information is as follows:

Telephone (312) 603-5981
Fax (312) 603-3747
Email Renee.Carrion@cookcountyil.gov

If you are released to return to work on a limited basis and wish to seek a reasonable accommodation, please complete the attached Reasonable Accommodation Request Form and submit it along with supporting medical documentation to the attention of Piemengie Hamisu, Acting EEO Officer by May 29, 2019. Ms. Hamisu's contact information is as follows:

Telephone (312) 603-1314
Fax (312) 603-0253
Email Piemengie.Hamisu@cookcountyil.gov

If the requested documentation is not timely received or if you are not medically released to return to work in any capacity by May 29, 2019 you will be administratively separated that same day.

Feel free to contact me with any questions at 312-603-6121.

Very truly yours,

Simone McNeil
Deputy Bureau Chief

EXHIBIT C

COUNTY OF COOK

PERSONNEL RULES

FILED DATE: 1/9/2020 3:08 PM 2020CH00288

IMPORTANT NOTICE

These Human Resources Rules are issued pursuant to the Human Resources Ordinance enacted as amended on April 5, 2000 and October 17, 2000 by the Cook County Board of Commissioners. The Ordinance directs the Chief of the Human Resources to issue rules. The Rules reflect procedures developed to comply with applicable federal, state and county laws and ordinances, the Judgment and Consent Decrees entered in Michael L. Shakman, et.al. v. The Democratic Organization of Cook County, et.al., No. 69 C 2145 on January 5, 1994 and other applicable statutes. In the event that provisions of these Rules vary from the terms of effective collective bargaining agreements, the terms of those agreements shall govern for affected members of the collective bargaining unit.

Please be advised that these Rules do not constitute a contract, and the language used in these Rules is not intended to create or to be construed as a contract or promise of continued employment. The Rules set forth general information and guidelines and do not purport to address every situation or contingency. Employees should direct questions about policies, programs or other applications of these Rules to the Bureau of Human Resources or other appropriate department. Employees should also be advised that the County Board has enacted Ordinances and that the President has promulgated Executive Orders from time to time and that they apply to all County employees. They appear in the Appendix to these rules and are hereby incorporated by reference. They include, without limitation, policies on Ethics, Human Rights, Domestic Violence, Drug-Free Workplace and Sexual Harassment. Employees should consult the Orders and Ordinances for their full text.

Please also be advised that the Ordinance empowers the County Board and the Chief of the Human Resources Bureau to enact amendments, revisions and changes to these Rules. The authority of the Chief of Human Resources to revise these Rules and promulgate new ones in accordance with the Human Resources Ordinance shall not be limited, circumscribed or otherwise affected by these Rules. Employees should consult the Rules from time to time to familiarize themselves with any revisions or additions to these Rules.

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should contact the Human Resources Leave Coordinator with questions pertaining to Family Military Service Leave.

(e) **Victims' Economic Security and Safety Act (VESSA)**

An employee who is a victim of domestic or sexual violence (sexual assault or stalking) or an employee who has a family or household member who is a victim of domestic or sexual violence whose interests are not adverse to the employee as it relates to the domestic or sexual violence may be eligible to take VESSA leave from the first day of employment if the employee or employee's family or household member is experiencing an incident of domestic or sexual violence or to address domestic or sexual violence as provided in the County's VESSA Leave Policy. Employees seeking VESSA leave should notify the BHR Leave Coordinator at least forty-eight (48) hours in advance of taking VESSA leave, unless such notice is not practicable. If such notice is not practicable, then the employee must provide notice of VESSA leave within a reasonable time period.

Employees may request VESSA leave through the Cook County Time and Attendance (CCT) System or by submitting a completed VESSA Leave Request Form to the BHR Leave Coordinator. The employee must provide proper certification and supporting documentation to the BHR Leave Coordinator. Failure to provide proper certification and documentation may result in delay or denial of leave. For more information, please see the County's Victims' Economic Security and Safety Act Leave Policy.

6.4 **DISABILITY PROVISIONS**

Employees should contact the Cook County Annuity and Benefit Fund ("Fund") to obtain an application, benefit information, eligibility rules and other documentation pertaining to ordinary or duty-related disability.

(a) **Ordinary Disability**

Ordinary disability is the result of injury or illness due to any cause other than that incurred in the performance of an act of duty. Employees seeking ordinary disability benefits are required to use all accrued paid leave (sick, personal and vacation) before any disability payment can be made by the Fund.

Employees must also inform their supervisors and department heads of their intention to apply for disability, as well as the length and terms of any benefits granted by the Fund. Employees must notify their department heads of their readiness to return to work before the termination dates of their disability leaves. In all cases, employees must notify their department heads within one business day after being released for duty by a physician or the expiration of benefits, whichever comes first.

An employee who is on official disability leave and returns to work within 60 calendar days after disability leave is terminated shall be eligible to receive the salary paid at the time disability leave started, provided the budget of the department can accommodate the salary and, if not, the employee shall be eligible to have the salary received at the time disability leave started restored at the earliest possible date.

(b) Duty-Related Disability

Duty-related disability results from injury or illness that arises out of and in the course of employment and in accordance with the Illinois Worker's Compensation Act, 820 ILCS 305, *et seq.*

1. It is the responsibility of injured employees to report any injury, regardless of severity, as soon as possible to their supervisor. The responding supervisor should ensure that the employee is provided with the appropriate medical response to the injury. The supervisor may, depending on the nature of the injury, request outside medical response to the situation. Once the injured employee provides verbal notice, the supervisor or manager is responsible for reporting the claim to the Department of Risk Management.
2. Cook County Department of Risk Management is responsible for the administration and payment of Worker's Compensation benefits for injuries or illness sustained in the course and scope of employment with Cook County. The Department of Risk Management performs these duties in accordance with the Illinois Workers' Compensation Act.
3. The injured worker is required to cooperate with the Department of Risk Management and at a minimum, must provide written medical updates within 24 hours of any evaluation and updated medical information and work restrictions every 30 days or as otherwise requested. The work restrictions should be shared with the employing department, and the employing department should make an effort to provide modified duty as outlined in the work restrictions.
4. Any employee who is off duty and receiving supplemental temporary total disability may be eligible to receive duty disability benefits as provided under the provisions of the Cook County Employees Annuity and Disability Fund. Separate application must be made with the Fund.
5. No employee shall return to duty after having been carried on supplemental temporary total disability or on temporary total disability compensation without a physician's approval to return to work and authorization from Cook County.
6. Employees on approved duty-disability leave will accrue paid time off in the same manner as afforded in the normal course of County Employment.

EXHIBIT D

Date: May 23, 2019

To: Simone McNeil, Deputy Director, Bureau of Human Resources

From: John O'Connell (County Employee No. 373292)

CC: President Toni Preckwinkle
 Commissioner John Daley, Chairman, Finance Committee
 Velisha Haddox, Bureau Chief, Human Resources
 Renee Carrion, Personnel Services Manager
 Piemengie Hamisu, Acting EEO Officer

Dear Ms. McNeil,

I tried reaching you by telephone but I was unable to do so. Therefore, I am submitting this letter as a written request.

I received your attached May 16, 2019, letter stating that I must provide medical documentation indicating my expected return to work date by May 29, 2019, and that I will be terminated if I am not medically released to return to work by May 29, 2019.

I have attached a May 2, 2019, letter from the Cook County Pension Fund showing that my application for continuation of disability benefits due to my Multiple Sclerosis was approved by the Retirement Board on May 2, 2019, for a period ending November 30, 2019. Under the Pension Fund's disability rules, with the number of years of my County service, I am eligible for approximately eight months of additional disability benefits beyond November 30, 2019, if I meet the medical requirements at that time.

I began working for Cook County around the Summer of 1999. In 2001, I was diagnosed with Multiple Sclerosis. By around late 2016, my neurological condition had worsened to the point where I was not able to work, and my neurologist told me I should not work. Among a variety of other symptoms, I could no longer stand or walk, and I suffered from extreme fatigue. These symptoms have continued to the present.

I applied for disability benefits from the Cook County Pension Fund and was granted those benefits by the Retirement Board around early 2017, based on information and medical documentation provided by my neurologist and an independent medical examination ordered by Cook County. Since then, and most recently on May 2, 2019, the Retirement Board has approved my applications for continuation of disability benefits. Each of these applications included up-to-date information and documentation provided by my neurologist and independent medical examinations by the County. The amount of disability time for which I am eligible is based on my years of service under County rules/ordinance.

All of the records which support and justify the County's granting of my disability benefits are with the Retirement Board. I am happy to make my medical records available to you if you wish.

At this time, I am unable to provide you with medical documentation authorizing my return to work by May 29, 2019, as you requested in your letter. The Retirement Board has informed me that I will lose my disability benefits if you terminate me. Therefore, I respectfully request that you allow me to use the disability benefits which I am granted by the Retirement Board under County rules/ordinance, rather than terminating me as threatened in your May 16, 2019, letter.

Finally, I have temporarily relocated to Nevada to be close to my sister so she can assist me with my daily activities when my wife is unable to do so.

Sincerely,

John R. O'Connell
 708-271-3470, jt527@aol.com

A177

FILED DATE: 1/9/2020 3:08 PM 2020CH00288

EXHIBIT E



BUREAU OF HUMAN RESOURCES

VELISHA L. HADDOX

BUREAU CHIEF

118 North Clark Street, Room 840 • Chicago, Illinois 60602 • (312) 603-3300

TONI PRECKWINKLE

PRESIDENT

**Cook County Board
of Commissioners**

BRANDON JOHNSON

1st District

DENNIS DEER

2nd District

BILL LOWRY

3rd District

STANLEY MOORE

4th District

DEBORAH SIMS

5th District

DONNA MILLER

6th District

ALMA E. ANAYA

7th District

LUIS ARROYO JR

8th District

PETER N. SILVESTRI

9th District

BRIDGET GAINER

10th District

JOHN P. DALEY

11th District

BRIDGET DEGNEN

12th District

LARRY SUFFREDIN

13th District

SCOTT R. BRITTON

14th District

KEVIN B. MORRISON

15th District

JEFFREY R. TOBOLSKI

16th District

SEAN M. MORRISON

17th District

June 13, 2019

John O'Connell

1120 Las Brisas Drive

Minden, NV 89423

Email: Jt527@aol.com

Dear Mr. O'Connell,

The Cook County Bureau of Human Resources is in receipt of your letter dated May 23, 2019 requesting not to be terminated due to your medical condition and the Cook County Pension and Annuity Fund's (Pension Fund) approval of your disability benefits.

Please be advised that any all determinations regarding your disability benefits fall solely within the discretion of the Pension Fund, which is a separate legal entity from the Cook County Offices under the President, your employer.

We are granting you an extension of time, until June 29, 2019, to provide medical documentation indicating your projected return to work date and/or authorizing you to return to work with or without a reasonable accommodation. Failure to provide such documentation will result in administrative separation.

Feel free to contact me at 312-603-6121.

Very truly yours,

Simone McNeil

Deputy Bureau Chief

EXHIBIT F



BUREAU OF HUMAN RESOURCES

VELISHA L. HADDOX

BUREAU CHIEF

118 North Clark Street, Room 840 • Chicago, Illinois 60602 • (312) 603-3300

TONI PRECKWINKLE

PRESIDENT

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LARRY SUFFREDIN

13th District

SCOTT BRITTON

14th District

KEVIN MORRISON

15th District

JEFFREY R. TOBOLSKI

16th District

SEAN M. MORRISON

17th District

July 3, 2019

John O'Connell
1120 Las Brisas Drive
Minden, NV 89423

Dear Mr. O'Connell,

The Bureau of Human Resources has not received medical documentation indicating a projected return to work date. Nor has the Bureau of Human Resources received an authorization returning you to work with or without a reasonable accommodation. You have been separated from your position effective July 1, 2019.

Enclosed is a separation packet for your information and review.

Feel free to contact me at 312-603-6121.

Very truly yours,

Simone McNeil
Deputy Bureau Chief

EXHIBIT G



BUREAU OF HUMAN RESOURCES

VELISHA L. HADDOX

BUREAU CHIEF

118 North Clark Street, Room 840 • Chicago, Illinois 60602 • (312) 603-3300

TONI PRECKWINKLE

PRESIDENT

**Cook County Board
of Commissioners**

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SCOTT R. BRITTON

14th District

KEVIN B. MORRISON

15th District

JEFFREY R. TOBOLSKI

16th District

SEAN M. MORRISON

17th District

August 23, 2019

Michael L. Shakman

Miller, Shakman, Levine & Feldman, LLP

180 N. LaSalle Street

Chicago, IL 60601

Re: John O'Connell

Dear Mr. Shakman:

The Cook County Bureau of Human Resources (Bureau) is in receipt of your letter dated August 7, 2019. The Bureau's decision to administratively separate Mr. O'Connell is unrelated to the Cook County Pension and Annuity Fund, a separate legal entity from Cook County Offices Under the President.

For questions pertaining to Mr. O'Connell's benefits or any processes related thereto, you may contact Brent Lewandowski, Senior Benefits Manager, Cook County Pension and Annuity Fund at (312) 603-1218.

Sincerely,

Velisha L. Haddox

Bureau Chief

Bureau of Human Resources

IN THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

JOHN O'CONNELL,)	
)	
Plaintiff-Appellant,)	
	)	Appeal from the
v.	)	Circuit Court of Cook County
)	
COOK COUNTY and the BOARD	)	Case No. 2020 CH 00288
OF TRUSTEES OF THE COUNTY)	
EMPLOYEES' AND OFFICERS'	)	Hon. Neil H. Cohen
ANNUITY AND BENEFIT FUND)	
OF COOK COUNTY,)	
)	
Defendants-Appellees.)	

APPELLANT'S OPENING BRIEF

Michael L. Shakman (mlshak@aol.com)
Mary Eileen Cunniff Wells (mwells@millershakman.com)
Rachel Ellen Simon (rsimon@millershakman.com)
Miller Shakman Levine & Feldman LLP (#90236)
180 N. LaSalle Street, Suite 3600
Chicago, Illinois 60601
312-263-3700

ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

Plaintiff John O’Connell worked for Defendant Cook County (the “**County**”) for 17 years, beginning in 1999, before he became permanently disabled due to multiple sclerosis. When his condition had deteriorated to the point that he could no longer work, he asked for and received leave from the County. He also asked for and received disability benefits from the other Defendant in this lawsuit, the Board of Trustees of the County Employees’ and Officers’ Annuity and Benefit Fund of Cook County (the “**Board**”).

Starting in early 2017, the County placed O’Connell on disability leave and the Board paid his monthly disability benefits. The Board informed O’Connell that based on his years of service he would be entitled to ordinary disability benefits through approximately August 2021.

On July 1, 2019, the County terminated O’Connell as an employee because he was unable to return to work due to his permanent disability. And because O’Connell was no longer a County employee, the Board stopped paying him disability benefits on July 1, 2019.

In this lawsuit O’Connell seeks the remainder of the approximately four-and-a-half years of disability benefits that he had accrued under the Pension Code based on his more than 17 years of active service to the County. The Circuit Court dismissed his complaint with prejudice. All issues are raised on the pleadings. They involve the interpretation of the County Pension Code and the application of the Pension Clause of the Illinois Constitution – neither of

which requires continued employee status to received accrued pension disability benefits.

ISSUES PRESENTED FOR REVIEW

1. Whether the Board and the County violated the Pension Code and the Pension Clause of the Illinois Constitution by ceasing to pay O'Connell his accrued pension disability benefits because the County had terminated his status as an employee due to his permanent disability.

2. Whether there are actual controversies between O'Connell and the County subject to declaratory relief.

3. Whether the Board violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution by terminating O'Connell's disability benefits without any process, notice, or hearing.

The Circuit Court's ruling on the first two issues were dispositive on Counts I, III, and V of O'Connell's Complaint, and O'Connell seeks reversal of the Circuit Court's dismissal of those counts. O'Connell does not appeal the Circuit Court's dismissal of Counts II and IV.

JURISDICTION

Under Supreme Court Rules 301 and 303, jurisdiction is based upon a timely notice of appeal filed by O'Connell on September 28, 2020 (A1-2),

following entry of the Circuit Court’s final order dated September 14, 2020 (the “**Order**”) (A3-12).¹

STATUTES INVOLVED

This appeal involves Article 9 of the Illinois Pension Code, 40 ILCS 5/9-101 *et seq.* Because of Article 9’s length, the relevant sections are provided in the Appendix. (A53-57.)

STATEMENT OF FACTS

I. The County and the Board Terminate O’Connell’s Disability Benefits Because He Is Unable to Work Due to His Disability.

O’Connell began his employment with the County in 1999. At that time, he also became a participant in and contributor to the County Employees’ and Officers’ Annuity and Benefit Fund (the “**County Pension Fund**”). (Compl. ¶ 29, A19.) County employees are required to contribute a percentage of their salaries to the County Pension Fund every month. *See* 40 ILCS 5/9-169 (referring to “the amounts deducted from the salaries of the employees”).²

In 2001, while working full time for the County, O’Connell was diagnosed with multiple sclerosis. (Compl. ¶ 30, A20.) He continued to work

¹ The record is cited as follows: appendix (A__) and court filings (C__). Additional descriptions are provided when appropriate.

² *See also Employee Contributions, COOK COUNTY PENSION FUND*, <https://www.cookcountypension.com/employees/contributions> (last visited Dec. 24, 2020).

with accommodations until the end of 2016, when his health had deteriorated to the point that he could no longer work. (*Id.*)

In January 2017, O’Connell took leave from his position with the County and applied to the Board for the disability benefits that he was promised under the Pension Code. (*Id.* ¶ 31, A20.) The Board granted his application for benefits. (*Id.* ¶ 7, A15.) Under the Board’s rules, a disabled employee must periodically reapply for the continuation of disability benefits. O’Connell did so, and the Board approved all of his subsequent applications for the continuation of benefits. (*Id.*) Most recently, on May 2, 2019, the Board granted his application for a continuation of disability benefits through November 30, 2019. (*Id.* ¶ 35, Ex. A, A20, A33.) A representative of the Board told O’Connell that based on his years of service with the County, he was eligible to receive disability benefits until approximately August 2021. (Compl. ¶ 7, A15.)

A few weeks later, on May 16, 2019, the County sent O’Connell a letter requiring that he provide medical documentation indicating his expected return-to-work date. (*Id.* ¶ 36, Ex. B, A21, A35.) The letter stated that if the requested documentation was not received by May 29, 2019, or if O’Connell was not medically released to return to work by that date, he would be “administratively separated.” (*Id.*) O’Connell contacted the Board and was told that the Board would cease paying his disability benefits if the County terminated him. (Compl. ¶ 38, A21.) O’Connell explained to the County that

he could not provide a return-to-work date because he is unable to work due to his permanent disability. (*Id.* ¶ 39, A21-22.) He asked the County to continue his employment status for the period in which he was eligible to receive disability benefits based on his years of service. (*Id.*) The County refused, disclaiming any role in the Board’s administration of disability benefits, and terminated O’Connell effective July 1, 2019. (*Id.* ¶¶ 40-41, A22.)

After O’Connell’s termination by the County, the Board – without giving any advance notice or opportunity to object – stopped paying his disability benefits. (*Id.* ¶ 42, A22.) At the same time, the County stopped making contributions to the County Pension Fund on O’Connell’s behalf (the “County Contributions,” discussed below). Such contributions are required by the Pension Code as part of disability benefits. (*Id.* ¶ 43, A22.) In addition, because O’Connell’s disability benefits were terminated before he reached the end of the disability-benefits eligibility period based on his years of service, he lost other benefits to which he was otherwise entitled under the Pension Code: the “Credit Purchase Option” and the “Early Annuity Option,” which are discussed below. (*Id.* ¶ 44, A22.)

On July 24, 2019, O’Connell, through counsel, sent Margaret Fahrenbach, the Legal Advisor to the Board, a letter objecting to the termination of his disability benefits and requesting their reinstatement. (*Id.* ¶ 45, A22-23.) Fahrenbach responded orally that the Board’s position is that continued employment status is required for the continuation of disability

benefits but that outside counsel was reviewing O’Connell’s request. Despite repeated requests over several months, the Board did not respond to O’Connell’s request for reinstatement of his disability benefits. (*Id.*)

II. Proceedings in the Circuit Court.

On January 9, 2020, O’Connell sued the Board and the County, alleging that the termination of his disability benefits violates the Illinois Constitution, the Illinois Pension Code, and the Fourteenth Amendment of the United States Constitution. His complaint contained the following counts:

- Counts I (Declaratory Judgment) and III (Mandamus) seeking reinstatement of O’Connell’s disability benefits because continued employment with the County is not required for the continuation of disability benefits. (Compl. ¶¶ 47-52, 57-62, A23-24, A27.)
- Counts II (Declaratory Judgment) and IV (Mandamus), pleaded in the alternative to Counts I and III, seeking reinstatement of O’Connell’s employment with the County if continued employment is required for him to continue to receive disability benefits, and reinstatement of his disability benefits. (Compl. ¶¶ 53-56, 63-69, A25-26, A28-29.)
- Count V, against only the Board, alleging a violation of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983, based on the Board’s termination of O’Connell’s disability benefits without due process. (Compl. ¶¶ 70-73, A30.)

The Board and the County filed separate motions to dismiss under 735 ILCS 5/2-619.1. The Circuit Court granted both motions and dismissed the complaint with prejudice. (Order, A3-12.) The Circuit Court dismissed Counts I, III, and V against the Board, and Count III against the County, based on its erroneous conclusion that O’Connell, as a former employee, did not have a right to continued disability benefits. (*Id.*) The Circuit Court also dismissed Count

I against the County for lack of an “actual controversy” between the County and O’Connell. (*Id.* at 3, A5.)

O’Connell timely appealed and seeks reversal of the Circuit Court’s dismissal of Counts I, III, and V.

STANDARD OF REVIEW

This Court reviews *de novo* the dismissal of a complaint under either Section 2-615 or Section 2-619 of the Code. *Calloway v. Chicago Bd. of Election Comm’rs*, 2020 IL App (1st) 191603, ¶ 9. When reviewing the sufficiency of a complaint under a Section 2-615 motion to dismiss, the Court must accept as true all well-pleaded allegations in the complaint, *id.*, ¶ 21, and “should dismiss the cause of action ‘only if it is clearly apparent that no set of facts can be proven which will entitle the plaintiff to recovery,’” *id.*, ¶ 10 (citation omitted). A motion to dismiss under Section 2-619, on the other hand, “admits the sufficiency of the complaint but asserts an affirmative matter that avoids or defeats the claim.” *Id.*, ¶ 9. When considering a Section 2-619 motion, the Court again must accept the complaint’s well-pleaded allegations as true and view them in the light most favorable to the nonmovant. *American Family Mut. Ins. Co. v. Krop*, 2018 IL 122556, ¶ 13.

De novo review also is appropriate because resolution of this appeal turns on the interpretation of the Pension Code and the Pension Clause of the Illinois Constitution. *Accettura v. Vacationland, Inc.*, 2019 IL 124285, ¶ 11.

ARGUMENT

I. Applicable Legal Authorities

Article 9 of the Pension Code and the Pension Clause of the Illinois Constitution “must be liberally construed in favor of the rights of the pensioner.” *Carmichael v. Laborers’ & Ret. Bd. Employees’ Annuity & Benefit Fund*, 2018 IL 122793, ¶ 24. “[T]o the extent that there may be any lingering doubt about the meaning or effect of the provisions at issue in this case, [this Court] must resolve that doubt in favor of the members of [the] public retirement system.” *Id.*

A. The Pension Clause of the Illinois Constitution

The Pension Clause guarantees that “[m]embership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.” Ill. Const. 1970, art. XIII, § 5 (the “**Pension Clause**”). In other words, “if something qualifies as a benefit of the enforceable contractual relationship resulting from membership in one of the pension or retirement systems of any unit of local government . . . ‘it cannot be diminished or impaired.’” *Carmichael*, 2018 IL 122793, ¶ 25 (citation and internal quotation marks omitted). All pension benefits that flow directly from membership, including disability benefits, are protected, *id.*, and “members of pension plans subject to its provisions have a legally enforceable right to receive the benefits they have

been promised,” *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 46; *see also Bd. of Trustees of City of Harvey Firefighters’ Pension Fund v. City of Harvey*, 2017 IL App (1st) 153074, ¶ 176.

B. Article 9 of the Pension Code

The contractual relationship protected by the Pension Clause “is governed by the actual terms of the contract or pension plan in effect at the time the employee becomes a member of the retirement system.” *Matthews v. Chicago Transit Auth.*, 2016 IL 117638, ¶ 59. Here, the relevant contractual provisions are contained in Article 9 of the Illinois Pension Code, 40 ILCS 5/9-101 *et seq.*, which established the County Pension Fund and sets out the annuities, disability benefits, and other pension benefits for County employees. Article 9 provides for two types of disability benefits: the “duty disability benefit” for employees who are disabled as a result of an injury incurred on the job, and the “ordinary disability benefit” for employees who become disabled from any other cause. Only the latter is relevant here.

For the ordinary disability benefit, the Pension Code provides, in part, that

An employee . . . who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof.

40 ILCS 5/9-157. That provision does not require that the “employee . . . who becomes disabled” must remain a County employee to be entitled to “ordinary disability benefit during such disability.”

The Pension Code guarantees at least three benefits to eligible disabled employees. *First*, the Board issues payments to disabled employees from the County Pension Fund in the amount of “50% of the employee’s salary at the date of disability”; these payments are referred to herein as “**Disability Benefit Payments**.” *Id.* *Second*, the Pension Code requires that the County contribute to the County Pension Fund on behalf of the disabled employee:

Instead of all amounts ordinarily contributed by an employee and by the county for age and service annuity and widow’s annuity based on the salary at date of disability, the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is deemed for annuity and refund purposes as amounts contributed by him. The county shall also contribute ½ of 1% salary deductions required as a contribution from the employee under Section 9-133.

Id. *Third*, the County must “contribute all amounts ordinarily contributed by it for annuity purposes for any employee receiving ordinary disability benefit as though he were in active discharge of his duties during such period of disability.” 40 ILCS 5/9-181. The two types of contributions by the County required by Sections 9-157 and 9-181 are referred to herein as the “**County Contributions**.”

If an employee has exhausted his credits for disability benefits and continues to be disabled, the Pension Code provides at least two additional

benefits. *First*, the employee has “the right to contribute to the fund at the current contribution rate for a period not to exceed a total of 12 months during his entire period of service and to receive credit for all annuity purposes for any such periods paid for.” 40 ILCS 5/9-174. This benefit is referred to herein as the “**Credit Purchase Option.**” *Second*, if the employee has exhausted his credits for disability benefits and withdraws before age 60 while still disabled, he “is entitled to receive the annuity provided from the total sum accumulated to his credit from employee contributions and county contributions to be computed as of his age on the date of withdrawal.” 40 ILCS 5/9-160. This disability benefit is referred to herein as the “**Early Annuity Option.**”

Article 9 of the Pension Code specifies eight circumstances in which disability benefits will be terminated. Only one could apply to O’Connell – and it does not come into play until he has received his accrued disability benefits, an event that never occurred because of the County and the Board’s actions. The first five are found in Section 9-157, which provides that disability benefits “shall cease” when the first of the following five dates occurs:

- (a) the date disability ceases.
- (b) the date the disabled employee attains age 65 for disability commencing prior to January 1, 1979.
- (c) the date the disabled employee attains 65 for disability commencing prior to attainment of age 60 in the service and after January 1, 1979.
- (d) the date the disabled employee attains the age of 70 for disability commencing after attainment of age 60 in the service and after January 1, 1979.

- (e) the date the payments of the benefit shall exceed in the aggregate, throughout the employee's service, a period equal to ¼ of the total service rendered prior to the date of disability but in no event more than 5 years. In computing such total service any period during which the employee received ordinary disability benefit and any period of absence from duty other than paid vacation shall be excluded.

40 ILCS 5/9-157 (emphasis added). (Subsection (e) is referred to herein as the **“Years of Service Credits.”**)

The other three inapplicable benefit-terminating circumstances are contained in Section 9-159, which states that disability benefits are “not payable” if the disabled employee (a) refuses to submit to an examination by a board-appointed physician; (b) receives any part of his salary or is employed by any public body supported in whole or in part by taxation; or (c) receives certain payments from the County under the Workers' Compensation Act or Workers' Occupational Diseases Act. 40 ILCS 5/9-159.

II. The County and the Board's Termination of O'Connell's Disability Benefits Violated the Pension Clause and the Pension Code.

O'Connell became disabled while employed by the County, initially applied for and received disability benefits while employed by the County, and was terminated by the County solely because of his inability to return to work due to his permanent disability. There is no dispute that if the County had not terminated his employee status, O'Connell would be entitled to receive disability benefits through approximately August 2021 based on his Years of Service Credits. The question presented in this appeal is whether O'Connell

is entitled to disability benefits until his Years of Service Credits are exhausted regardless of whether his status as a County employee continues.

The answer is that he is so entitled since none of the statutory provisions for termination of benefits applies. The Pension Code does not list termination of employment as a qualifying event for ceasing disability benefits. While only “[a]n employee” is eligible for disability benefits under Section 9-157, the term “employee” includes both current *and former* employees based on the definition of “employee” and its use throughout Article 9. The statutory framework and the purpose of the pension disability benefits also support this reading. Accordingly, the Board and the County’s actions denying O’Connell the remaining disability benefits to which he is entitled violate both the Pension Code and the Pension Clause.

A. The Plain Language of Article 9 Establishes that “Employee” Includes Former Employees.

The Board contends that it was entitled to terminate O’Connell’s disability benefits because he was no longer an “employee” under Section 9-157 once the County terminated his employee status due to his disability. The Board’s position is contrary to the definition and use of the term “employee” in Article 9 of the Pension Code. When construing a statute, the primary goal “is to ascertain and give effect to the legislature’s intent,” with the “best indicator of that intent [being] the language of the statute itself.” *Carmichael*, 2018 IL 122793, ¶ 35. Again, if there is “any lingering doubt about the meaning or

effect of the provisions” in the Pension Code, the Court “must resolve that doubt in favor of the members of [the] public retirement system.” *Id.*, ¶ 24.

1. The Definition of “Employee” in Article 9 Makes Clear that “Employee” Includes Former Employees – Thus, O’Connell Remained Entitled to Disability Benefits.

Section 9-108(a), in part, defines an “[e]mployee,” “contributor,” or “participant” as:

Any employee of the county *employed* in any position in the classified civil service of the county Any such employee in service on or after January 1, 1984, regardless of when he became an employee, shall be deemed a participant and contributor to the fund created by this Article *and the employee shall be entitled to the benefits of this Article.*

40 ILCS 5/9-108(a) (emphasis added).

The definition uses the past participle “employed,” which can refer to past, present, or future County employees. Bas Aarts, Sylvia Chalker & Edmund Weiner, *The Oxford Dictionary of English Grammar* 291 (2nd ed. 2014) (past participles can be used to refer “to past, present, or future time”). The only temporal limitation in this definition is that the employee must have been “in service on or after January 1, 1984.” Contrary to the Board’s position, this definition does not limit the meaning of “employee” to persons currently employed by the County at the time of entitlement to benefits. Had the General Assembly intended that meaning, it could easily have added to the last words of the definition the phrase “while the employee remains employed by the County.” But it did not.

The italicized language in Section 9-108(a), above, also establishes that “employee” is not limited to current employees. Significantly, the “benefits” to which the “employee” is expressly “entitled” under Article 9 include retirement annuities, widows’ annuities, and children’s annuities – plainly benefits that are available only to *former* employees or their family members. For instance, current employees do not receive “retirement annuities” while still working for the County; the “employees” eligible for “retirement annuities” are former employees.

Thus, “employee” as defined in Section 9-108(a) can only reasonably be read to include former as well as current employees. Accordingly, the plain language of Article 9 establishes that O’Connell is entitled to continued disability benefits despite the County’s termination of his employee status. If there were any doubt about this interpretation (there is not), the liberal rules of interpretation discussed above require that the Court “resolve that doubt” in O’Connell’s favor. *Carmichael*, 2018 IL 122793, ¶ 24.

2. “Employee” as Used Throughout Article 9 Refers to Both Current and Former Employees.

Article 9 is replete with examples of the term “employee” being used to refer to *former* employees and their families, rebutting the County and the Board’s argument to the contrary. For example:

- Section 9-135.1 discusses the death benefit payable “[u]pon the death of an employee in service *or* while receiving a retirement annuity.” 40 ILCS 5/9-135.1 (emphasis added). The only employees that can receive a retirement annuity are, by definition, former employees.

- Section 9-148 states that in certain circumstances “widows or wives of employees have no right to annuity,” such as “(c) The widow or wife of an employee with 10 or more years of service whose death occurs out of and *after he has withdrawn from service*, and who has received a refund of contributions for annuity purposes; [and] (d) The widow or wife of an employee with less than 10 years of service who dies out of service *after he has withdrawn from service* before he attained age 60.” 40 ILCS 5/9-148 (emphasis added).
- Section 9-154 provides, in part, that a “Child’s Annuity” is payable “[u]pon death of an employee *who withdraws from service* after age 50 . . . and who has entered upon or is eligible for annuity.” 40 ILCS 5/9-154(c) (emphasis added).
- Section 9-159 refers to the disability benefit payable to the widow of “an employee,” who, being deceased, clearly is not a current employee. 40 ILCS 5/9-159.
- Section 9-160 states that for “[a]n employee whose disability continues after he has received ordinary disability benefit for the maximum period of time prescribed by this Article, and who *withdraws* before age 60 while still so disabled,” the employee’s children are entitled to certain annuity benefits “[u]pon [his] death.” 40 ILCS 5/9-160 (emphasis added).
- Section 9-161 discusses the calculation of annuities “[w]hen an employee *who has withdrawn from service* after the effective date re-enters service.” 40 ILCS 5/9-161 (emphasis added).

In each of these provisions, the term “employee” is used to refer to an “employee” who is *not* a current employee. The meaning of “employee” as used in Section 9-157 also is not so limited. Accordingly, O’Connell is entitled to continue to receive disability benefits regardless of his “administrative separation” from the County.

**B. Interpreting “Employee” as Meaning Only
Current Employees Would Frustrate the Statutory
Framework and Lead to Absurd and Unjust Results.**

The statutory framework of Article 9 makes clear that termination of employment does not, on its own, extinguish an employee’s entitlement to disability benefits. Aside from its argument that “employee” in Article 9 means only current employee – which, as discussed, contradicts the plain language of the statute – the Board points to no other basis in the statute for ceasing O’Connell’s disability benefits based on the County terminating his employee status. There is none. Article 9 clearly states that a disabled employee is “entitled to ordinary disability benefit *during such disability*” until the occurrence of one of five enumerated events (or “dates”) that cause the disability benefits to “cease,” 40 ILCS 5/9-157 (emphasis added), *or* until one of three listed events that make the disability benefits “not payable,” 40 ILCS 5/9-159. Indisputably, none of these eight possible benefits-terminating events applies to O’Connell.

This is the rule that applies in such circumstances: “Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words of limitation.” *In re Estate of Lewy*, 2018 IL App (1st) 172552, ¶ 16 (citations omitted); *see also Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 152 (1997) (where a statute lists the things to which it refers, “the inference that all omissions should be understood as exclusions stands despite the lack of any

negative words of limitation”). Here, neither Section 9-157 nor Section 9-159 lists termination of County employment as a benefit-terminating event. Therefore, the Court should not expand on the limited set of events that the legislature defined, particularly when that results in the forfeiture of pension benefits to a permanently disabled individual. *See Shields v. Judges’ Ret. Sys. of Ill.*, 204 Ill. 2d 488, 496-97 (2003) (declining to find basis for limiting refund of pension contributions based on pensioner’s felony conviction where statute was “silent on the subject”).

Interpreting “employee” in Section 9-157 as meaning only current employees, as the Board urges, leads to absurd and unjust results. When interpreting a statute, it is proper to consider “the reason for the law, the problem sought to be remedied, the goals to be achieved, and the consequences of construing the statute one way or another.” *Carmichael*, 2018 IL 122793, ¶ 35. Here, if “employee” in Section 9-157 excluded employees such as O’Connell who are administratively separated while receiving disability benefits, then the length of time that an employee is entitled to the ordinary disability benefit would not be established by one of the carefully defined terminating events specifically listed in the Pension Code. Instead, it would depend on the County’s leave policy and when the County’s human resources department decided to terminate the employee. Such an interpretation would have the perverse effect of incentivizing the County to terminate any employee who became permanently disabled during his or her employment regardless of

how long the employee had served the County and contributed to the County Pension Fund. Such an action would save the County money and deprive the employee of the disability benefits to which he would otherwise be entitled. It is impossible to believe the General Assembly would have wished to permit such action.

The illogic and unfairness of the Board's position is evident: The County terminated O'Connell's employee status solely because he was unable to provide a return-to-work date because of his permanent disability. In other words, his employment status – and therefore his disability benefits – ended *because* he is permanently disabled, even though under express provisions of the Pension Code he still had approximately two years of disability benefits remaining based on his Years of Service Credits – rights earned from more than 17 years of service to the County.

In short, the only reasonable way to interpret “employee” in Section 9-157 is that it includes both current and former employees. That is how “employee” is used in the definition and throughout Article 9. That meaning is consistent with the narrow definitions of circumstances for the termination of disability benefits, and it avoids absurd results. Regardless of his employment status with the County, O'Connell is entitled to disability benefits until one of the events listed in Sections 9-157 or 9-159 occurs.

This conclusion does not impose an open-ended obligation on the Board (or the County for the County Contributions); the Pension Code places an outer

limit of five years on ordinary disability benefits. In O’Connell’s case, before terminating all benefits, the Board had expressly informed him that he would be entitled to ordinary disability benefits through approximately August 2021 based on his years of service. (Compl. ¶ 7, A15.) Adopting the Board’s construction in this suit would deprive O’Connell of the benefit period to which he is entitled, thus violating the principle that the Pension Code “must be liberally construed in favor of the rights of the pensioner,” *Carmichael*, 2018 IL 122793, ¶ 24, and “in such a way as to avoid ‘impractical or absurd results,’” *Dynak v. Bd. of Educ. of Wood Dale Sch. Dist. 7*, 2020 IL 125062, ¶ 27 (internal quotation marks and citations omitted).³

**C. The Circuit Court Misstated Article 9 and
Misapplied the Canons of Statutory Interpretation.**

The Circuit Court erred in accepting the Board’s argument that “employee” in Article 9 means only current employee and that, therefore, O’Connell was not entitled to the continuation of his disability benefits. In doing so the Circuit Court made several legal errors. First, it misquoted Article 9, stating that “Article 9 of the Pension Code is clear that an ‘employee’ who ‘is employed’ by the County is entitled to receive disability benefits under the

³ To be clear, interpreting “employee” to include former employees does not mean that employees who become disabled *after* withdrawing from service are eligible for disability benefits, except in limited circumstances where the employee returns to service. See, e.g., 40 ILCS 5/9-157 (“No employee who becomes disabled . . . during any period of absence from duty without pay may receive ordinary disability benefit until he recovers from such disability and [works] for at least 15 consecutive days . . .”).

Pension Code. 40 ILCS 5/9-108; 40 ILCS 5/9-197.” (Order at 7, A9 (emphasis added).) That is clearly wrong. Neither section cited by the Circuit Court contains the “is employed” language or otherwise limits “employee” to current employees. Nor does Section 9-157, the main provision at issue, which the Circuit Court likely intended to cite rather than Section 9-197 (which pertains to determining service credits).

In addition to inventing language not found in Article 9, the Circuit Court reasoned that disability benefits are unavailable to former employees because Article 9 “contains no definition for ‘former employee’ or ‘past employee’ or terminated employee.” (Order at 7, A9.) But such definitions are unnecessary in light of the most reasonable reading of the language at issue. Moreover, the lack of separate definitions in Article 9 for “former,” “past,” or “terminated” employees actually *supports* the broader interpretation of “employee” that includes former employees: Article 9 does not separately define categories of former employees because the term “employee” already includes them.⁴

The Circuit Court also cited the definition of “fireman” in Article 6 of the Pension Code to support its conclusion. (Order at 7, A9.) Article 6 defines

⁴ The Circuit Court also noted that Article 9 contains definitions for “present employee” and “future entrant.” (Order at 7, A9.) These definitions are irrelevant. Both define classes of employees based on their date of employment and when they began contributing to the Fund in relation to certain amendments to Article 9. *See* 40 ILCS 5/9-109; 40 ILCS 5/9-110.

“[f]ireman” as “[a]ny person who: (a) *was, is, or shall be* employed by a city” 40 ILCS 5/6-106 (emphasis added). But Article 6 is not (obviously) Article 9, which governs a different pension fund entirely.

Each article needs to be read with the rest of its provisions. Article 9’s definition of “employee” does not include “was, is, or shall be,” but the absence of those auxiliary verbs does not mean that the legislature intended for only one present tense verb (“is”) to apply. Indeed, Article 9 uses the past participle “employed” without any modifiers or auxiliary verbs, and without any temporal limitation. *See Bernal v. NRA Grp., LLC*, 930 F.3d 891, 896 (7th Cir. 2019) (silence in contract regarding timing of “any costs . . . incurred” strongly supports argument that “‘any’ should mean ‘any’ . . . includ[ing] costs incurred *at any time*”). Reading it to include former employees is the only way to make it consistent with other provisions of Article 9 that reference pension benefits paid to an “employee,” his or her family, or his or her estate; as discussed, these provisions (unambiguously) can only refer to former, as well as current, employees.

Even if the absence in Article 9 of the phrase “was, is, or shall be” (as used in Article 6) leaves the definition of “employee” ambiguous,⁵ under

⁵ *See, e.g., Ready v. United/Goedecke Servs., Inc.*, 232 Ill. 2d 369, 378 (2008) (holding that phrase “defendants sued by the plaintiff” was ambiguous); *id.* at 392-94 (Garman, J., dissenting) (use of past participle indicated that phrase meant all defendants against whom plaintiff filed suit and not just
...continued on next page

controlling case law any doubt is resolved in favor of the employees covered by the Article. This result is dictated by the rule that any ambiguity “must be liberally construed in favor of the rights of the pensioner.” *Carmichael*, 2018 IL 122793, ¶ 24; *accord Kanerva v. Weems*, 2014 IL 115811, ¶ 55. Here, that means construing “employee” in Section 9-157 to include former employees, such as O’Connell, who are terminated while receiving disability benefits. The Circuit Court ignored this rule, instead strictly and erroneously construing Article 9 against the rights of O’Connell, the disabled pensioner seeking approximately two years of disability benefits due to him based on his years of service to the County.

The Court should reverse the Circuit Court’s dismissal of Counts I, III, and V against the Board and the County.

**III. There Is an “Actual Controversy”
Between the County and O’Connell.**

The Circuit Court dismissed Count I against the County for lack of an “actual controversy” between the County and O’Connell, reasoning that the County does not have the authority “to decide who is eligible to receive a disability pension, to grant such a pension or to terminate such a pension.” (Order at 3, A5.) But O’Connell seeks not just a determination that he is still

those remaining in the lawsuit at time of trial); *Bernal*, 930 F.3d at 895-96 (“A quick survey of judicial opinions confirms that the past participle is an uncommonly flexible device.”).

eligible for disability benefits despite his termination by the County, but also a declaration that the Board *and the County* must provide O’Connell the disability benefits owed to him. (Compl. ¶¶ 48-52, A23-24.)

Although Count I and Count III are primarily directed at the Board, the disability benefits O’Connell is entitled to receive include the County Contributions, which the County has stopped paying in violation of the Pension Code and the Pension Clause. (Compl. ¶¶ 43, 52, A22, A24.) The County has not conceded that it should pay the County Contributions, and it disputes that its failure to do so violates any law. But if continued employment is not required for the continuation of disability benefits, then the County is violating the Pension Clause by failing to pay the County Contributions to the County Pension Fund on O’Connell’s behalf, and it must make the County Contributions going forward until O’Connell has exhausted his Years of Service Credit. Accordingly, the County and O’Connell have opposing interests and a live, concrete dispute creating an “actual controversy” between them sufficient to state a claim for declaratory judgment in Count I. *See Messenger v. Edgar*, 157 Ill. 2d 162, 170-71 (1993) (“The requirement of an actual controversy is meant only to distinguish justiciable issues from abstract or hypothetical disputes and is not intended to prevent the resolution of concrete disputes in which a definitive and immediate determination of the rights of the parties is possible.”). Accordingly, the Circuit Court’s dismissal of Count I against the County should be reversed.

IV. The Board Violated Due Process by Terminating O’Connell’s Disability Benefits without Any Process, Notice, or Hearing.

The Circuit Court dismissed O’Connell’s claim for violation of due process, alleged in Count V, based on its erroneous conclusion that O’Connell was not entitled to disability benefits “as a former employee of the County” and therefore did not have a “protectable interest” in the benefits for due-process purposes. (Order at 9, A11.) As discussed, however, O’Connell is entitled to the continuation of his disability benefits regardless of the termination of his employment by the County. Accordingly, he had a protected interest in those benefits and was entitled to due process before being deprived of them by the Board.

Kosakowski v. Board of Trustees of City of Calumet City Police Pension Fund, 389 Ill. App. 3d 381 (1st Dist. 2009), is instructive. There, the pension board had modified the plaintiff’s disability pension by issuing a letter announcing the reduction in his pension, contending that it had the statutory right to reduce the pension based on an error that had caused an overpayment. *Id.* at 383-84. The Appellate Court disagreed and affirmed the Circuit Court’s decision reversing the reduction in the pension. *Id.* at 386-87. It held that the Board could not modify a disability pension without notice and a hearing:

The receipt of a disability pension is a property right which cannot be diminished without procedural due process. *Wendl v. Moline Police Pension Board*, 96 Ill. App. 3d 482, 486-87, 51 Ill. Dec. 949, 421 N.E.2d 584 (1981). “The essence of procedural due process is meaningful notice and a meaningful opportunity to be heard.” *Trettenero v. Police Pension Fund of the City of Aurora*, 333 Ill. App. 3d 792, 799, 267 Ill. Dec. 468, 776 N.E.2d 840 (2002). In this

case, the Board afforded the plaintiff neither. Without notice and without a hearing, the Board unilaterally attempted to modify the disability pension which it had previously awarded to the plaintiff. *As a matter of due process, the Board should have provided the plaintiff with notice and an opportunity to be heard before modifying his pension. Moore v. Board of Trustees of the Sanitary District Employees' Annuity & Benefit Fund*, 157 Ill. App. 3d 158, 165-66, 109 Ill. Dec. 466, 510 N.E.2d 87 (1987).

Id. at 387 (emphasis added).

Here, as in *Kosakowski*, even if the Board believed its interpretation of the Pension Code was correct, that belief did not relieve it of its constitutional obligations to provide O'Connell notice and the opportunity to contest the termination of his disability benefits. Indisputably, the Board did not fulfill those obligations: It provided O'Connell no process, notice, or any hearing before or after it terminated his disability benefits. It provided no opportunity to submit any arguments for the Board's consideration before or after the discontinuation of his benefits. It did not even provide notice that it had terminated his disability benefits. The Board just stopped paying them. O'Connell became aware of the termination only because he called the Board. (Compl. ¶ 38, A21.) This shabby lack of any process violates the Fourteenth Amendment and § 1983, and the Circuit Court's order dismissing Count V should be reversed.

CONCLUSION

For the foregoing reasons, the Court should reverse the Circuit Court's ruling dismissing with prejudice Counts I, III, and V of O'Connell's complaint and remand with instructions to reinstate those counts. As the facts are

uncontested and receipt of pension benefits are vital to disabled persons like O'Connell, the Court should also order the Board and the County to pay O'Connell's remaining benefits and afford him the right to exercise the Credit Purchase Option and Early Annuity Option after he has exhausted his Years of Service Credits. The Court should grant such further relief as it deems proper.

Respectfully submitted,
John O'Connell,

By: /s/ Mary Eileen C. Wells
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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 27 pages.

By: /s/ Mary Eileen C. Wells
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on December 29, 2020, she caused a copy of the foregoing **Appellant's Opening Brief** to be filed electronically with the Clerk of the Illinois Appellate Court, First District, and to be served upon the following via Odyssey eFileIL and email:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing Certificate of Service are true and correct, except as to matters therein stated to be upon information and belief and as to such matters the undersigned certifies that she verily believes the same to be true.

Dated: December 29, 2020

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COOK COUNTY, IL
2020CH00288

**APPEAL TO THE ILLINOIS APPELLATE COURT, FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JOHN O'CONNELL,	)	10600784
)	
Plaintiff-Appellant,)	
)	
v.	)	2020 CH 00288
)	
COOK COUNTY and BOARD OF TRUSTEES	)	Hon. Neil H. Cohen
OF THE COUNTY EMPLOYEES' AND)	
OFFICERS' ANNUITY AND BENEFIT FUND)	
OF COOK COUNTY, ILLINOIS,)	
)	
Defendants-Appellees.)	

NOTICE OF APPEAL

Pursuant to Illinois Supreme Court Rules 301 and 303, Plaintiff-Appellant John O'Connell ("O'Connell"), hereby appeals to the Illinois Appellate Court, First District, the September 14, 2020 Order of the Circuit Court of Cook County entered in Case No. 2020 CH 00288. O'Connell respectfully asks the Appellate Court to reverse the foregoing order of the Circuit Court of Cook County, and, to the extent necessary, remand this matter for further proceedings.

Dated: September 28, 2020

Respectfully submitted,
John O'Connell,

By: /s/ Mary Eileen C. Wells
One of his attorneys

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The undersigned attorney hereby certifies that on September 28, 2020, she caused a copy of the foregoing **Notice of Appeal** to be filed electronically with the Clerk of the Circuit Court of Cook County via Odyssey eFile Illinois and to be served via Odyssey eFile Illinois and e-mail upon the following counsel of record:

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Dated: September 28, 2020

/s/ Mary Eileen C. Wells

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JOHN O'CONNELL,

Plaintiff,

v.

20 CH 288

**COOK COUNTY and the BOARD OF
TRUSTEES OF THE COUNTY
EMPLOYEES' AND OFFICERS'
ANNUITY AND BENEFIT FUND OF
COOK COUNTY,**

Defendant.

MEMORANDUM AND ORDER

Defendant Board of Trustees of the County Employees' and Officers' Annuity and Benefit Fund of Cook County ("the Board") has filed a Motion to Dismiss Certain Counts of Plaintiff's Complaint and to Strike Portions of the Prayer for Relief pursuant to 735 ILCS 5/2-619.1.

Defendant Cook County ("the County") has filed a Motion to Dismiss Plaintiff's Complaint pursuant to 735 ILCS 5/2-619.1.

I. Background

Plaintiff John O'Connell has filed a Complaint for Declaratory Judgment, Mandamus and Violation of Civil Rights ("Complaint") against the Board and the County. Plaintiff alleges that he began employment with the County in 1999 and became a participant in the County Employees' and Officers' Annuity and Benefit Fund of Cook County ("Pension Fund"). In 2001, Plaintiff was diagnosed with multiple sclerosis. By the end of 2016, Plaintiff's health had deteriorated to the point where he could no longer work.

In 2017, Plaintiff took a leave of absence and applied to the Board for disability benefits under Article 9 of the Pension Code. The Board granted his application and also granted his subsequent applications for continuance of the disability benefits.

In May of 2019, the County sent a letter to Plaintiff requesting that he provide a return-to-work date. The letter informed Plaintiff that his employment would be terminated if he failed to provide a date. Plaintiff informed the County that he could not provide a date because he was unable to work. Plaintiff's employment was terminated on July 1, 2019.

Following the termination of Plaintiff's employment, the Board discontinued Plaintiff's disability payments. When Plaintiff contacted the Board for an explanation, he was informed that continued employment with the County was a requirement for the payment of disability benefits.

On July 24, 2019, Plaintiff, through counsel, sent a letter to Margaret Fahrenbach, the Board's legal advisor, requesting that Plaintiff's disability benefits be reinstated. Ms. Fahrenbach responded that the Board's position was that continued employment was necessary to receive disability benefits.

On August 7, 2019, Plaintiff, through counsel, sent a letter to County Human Resources requesting reinstatement of his employment so that he could continue to receive disability payments for the duration of time he was entitled to receive such benefits based on his years of service. On August 23, 2019, the County denied the request informing Plaintiff that the decision to administratively separate Plaintiff from his employment was unrelated to the Pension Fund, a separate legal entity.

On May 8, 2020, Plaintiff filed his Complaint. Count I asserts a claim for declaratory judgment against the County and the Board. Count I seeks declarations that: (1) continued employment with the County is not a requirement for receiving disability benefits; and (2) termination of Plaintiff's disability benefits violated the Pension Code and the Illinois Constitution.

Count II, pled in the alternative to Count I, asserts a claim for declaratory judgment against the County and the Board. Count II seeks a declaration that Plaintiff's administrative separation violated the Pension Code and Illinois Constitution.

Count III of the Complaint seeks a writ of *mandamus* ordering the Board to reinstate Plaintiff's disability benefits, retroactive to July 2, 2019, and the County to reinstate all contributions or benefits related to Plaintiff's disability benefits.

Count IV, pled in the alternative to Count III, seeks a writ of *mandamus* requiring the County to reinstate Plaintiff's employment, retroactive to July 2, 2019, and requiring the Board to reinstate Plaintiff's disability benefits, retroactive to July 2, 2019.

Count V alleges that the Board violated the Fourteenth Amendment of the United States Constitution and 42 U.S.C. §1983 because the Board terminated Plaintiff's disability benefits without a pre or post-deprivation hearing.

II. The County's Motion to Dismiss

The County is moving to dismiss the Complaint pursuant to 735 ILCS 5/2-619.1. "A section 2-615 motion to dismiss challenges the legal sufficiency of the complaint. Yoon Ja Kim v. Jh Song, 2016 IL App (1st) 150614-B, ¶41. "Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Id. "All well-pleaded facts and all reasonable inferences from those facts are taken as true. Where unsupported by allegations of

fact, legal and factual conclusions may be disregarded.” Kagan v. Waldheim Cemetery Co., 2016 IL App (1st) 131274, ¶29. “In determining whether the allegations of the complaint are sufficient to state a cause of action, the court views the allegations of the complaint in the light most favorable to the plaintiff. Unless it is clearly apparent that the plaintiff could prove no set of facts that would entitle him to relief, a complaint should not be dismissed.” Id.

A §2-619 motion to dismiss “admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action.” Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under §2-619 permits “the disposal of issues of law or easily proved facts early in the litigation process.” Id. Section 2-619(a)(9) authorizes dismissal where “the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9).

A. Count I (Declaratory Judgment)(§2-615)

Count I seeks declarations that continued employment is unnecessary to receive disability benefits and that the termination of Plaintiff’s disability benefits violated the Pension Code and the Illinois Constitution. To state a claim for declaratory judgment, the complaint must sufficiently allege: “(1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests.” Record-A-Hit v. National Fire Ins. Co., 377 Ill. App. 3d 642, 645 (1st Dist. 2007) quoting Behringer v. Page, 204 Ill. 2d 363, 372 (2003). A pleading that alleges sufficient facts to show an actual controversy between the parties and prays for a declaration of rights states a cause of action. Alderman Drugs, Inc. v. Metropolitan Life Ins. Co., 79 Ill. App. 3d 799, 803 (1st Dist. 1979).

The County contends that there is no actual controversy between the County and Plaintiff as to Count I. The court agrees. The Pension Code is clear that the Board is the entity authorized to carry out the provisions of the Pension Code. 40 ILCS 5/9-185. No provision of the Pension Code allows the County to decide who is eligible to receive a disability pension, to grant such a pension or to terminate such a pension. Only the Board possesses such authority. Therefore, Count I does not, and cannot, allege any actual controversy between the County and Plaintiff.

Count I is dismissed with prejudice as to the County.

B. Count II (Declaratory Judgment)(§2-615)

Count II, pled in the alternative, seeks a declaration that the County’s termination of Plaintiff’s employment violated the Pension Code and the Illinois Constitution. The County contends that Plaintiff had no right to continued employment with the County and, therefore, there is no tangible legal interest supporting declaratory relief. The County further argues that neither the Pension Code nor the Illinois Constitution provide that the County is obligated to maintain the employment of an employee receiving disability benefits.

Under Illinois law, a medical inability to work constitutes “a ‘legitimate nondiscriminatory reason’ for discharge.” Brummel v. Grossman, 2018 IL App (1st) 170516, ¶55 (internal citations omitted). “Illinois law does not obligate an employer to retain an at-will employee who is medically unable to return to his assigned position.” Also, an employer is not obligated to reassign a disabled employee to another position rather than terminate his or her employment.” Id.

Under Illinois law, the County had the right to terminate Plaintiff’s employment based on his medical inability to return to work. While Plaintiff alleges that his termination was a violation of the Pension Code, Plaintiff does not identify any section of the Pension Code which prohibits a government employer from terminating the employment of an employee receiving disability benefits. An examination of the Pension Code reveals no such section.

Plaintiff further contends that his termination constituted a violation of the Pension Clause of the Illinois Constitution, but this is contrary to the case law. Article XIII, §5 of the Illinois Constitution of 1970 (“the Pension Clause”) provides that: “Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.” Ill. Const. 1970, art. XIII, §5. Pension benefits are protected under §5, whether those benefits were granted by statute or contract. Matthews v. Chicago Transit Authority, 2016 IL 117638.

The Illinois Supreme Court “has consistently held that the contractual relationship protected by [the Pension Clause] is governed by the actual terms of the contract or pension plan in effect at the time the employee becomes a member of the retirement system.” Matthews v. Chicago Transit Authority, 2016 IL 117638, ¶59. “While the pension protection clause guarantees the vested rights provided in the contract that defines a participants retirement system membership, it does not change the terms of that contract or the essential nature of the rights it confers.” ¶59.

Plaintiff’s disability benefits are only constitutionally protected to the extent of the vested benefits granted to him by statute or contract. Plaintiff has not identified any statute entitling him to employment with the County until his disability benefits are exhausted. Nor has Plaintiff alleged the existence of any enforceable contract pursuant to which the County agreed to continue his employment.

Because there is no statute or enforceable contract granting the Plaintiff the right to continued employment with the County while receiving disability benefits, the Complaint fails to allege any violation of the Pension Code. Furthermore, Illinois case law is clear that Plaintiff has no legal tangible interest in continued employment with the County. Therefore, Count II fails to state any viable claim against the County as a matter of law and must be dismissed with prejudice.

C. Counts III and IV (Mandamus)

1. Section 2-619(a)(9)

Count III, in part, seeks a writ of *mandamus* ordering the County to reinstate its contributions to the Pension Fund for Plaintiff's disability benefits. Count IV, pled in the alternative, seeks a writ of *mandamus* ordering the County to reinstate Plaintiff's employment until Plaintiff exhausts his disability benefits.

The County first contends that Counts III and IV should be dismissed because Plaintiff lacks standing. Standing requires an injury to a legally protected interest. Lombard Historical Comm'n v. Lombard, 366 Ill. App. 3d 715, 717 (2nd Dist. 2006). "To establish standing in a suit seeking a writ of mandamus, the complaining party must establish that there is a 'sufficiently protectable interest pursuant to statute or common law which is alleged to be injured.'" Cedarhurst of Bethalto Real Estate, LLC v. Vill. Of Bethalto, 2018 IL App (5th) 170309, ¶32.

As discussed above, Illinois law allows an employer to terminate the employment of an individual who is medically unable to perform his job duties. Plaintiff has failed to identify any contract or statute that would grant him the right to continued employment with the County. Nor has Plaintiff identified any contract or statute that requires the County to continue making contributions for disability benefits following his termination. Therefore, Plaintiff possesses no protectable interest under either statute or common law which was injured by the termination of his employment and the cessation of the County's contributions to the Pension Fund.

Plaintiff has no standing to seek a writ of *mandamus* against the County. Therefore, Counts III and IV are dismissed with prejudice as to the County.

2. Section 2-615

The County also contends that Counts III and IV should be dismissed pursuant to §2-615 because Plaintiff does not, and cannot, allege any facts showing that he has a right to continued employment with the County. The court agrees.

A party seeking *mandamus* must show a clear right to the relief sought. Noyola v. Bd. of Ed., 179 Ill. 2d 121, 133 (1997). As discussed above, Plaintiff had no right to continued employment with the County under common law and Plaintiff has not identified any statute or contract giving him a right to continued employment. Nor has Plaintiff identified any statute or contract requiring the County to continue making contributions on his behalf to the Pension Fund following the termination of his employment. Therefore, Plaintiff has no clear right to the relief sought against the County in Counts III and IV.

Counts III and IV are dismissed with prejudice pursuant to §2-615.

III. The Board's Motion to Dismiss

The Board is moving to dismiss the Complaint pursuant to 735 ILCS 5/2-619.1.

A. Section 2-619

The Board contends that all of Plaintiff's claims against it fail as a matter of law because Plaintiff had no legal right to disability payments following his termination. The Board asserts that the Pension Code does not provide for disability benefits to be paid to former employees.

1. Applicable Statutes

Section 9-157 of the Pension Code provides in relevant part as follows:

An employee . . . who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof.

* * *

Ordinary disability benefit shall be 50% of the employee's salary at the date of disability. Instead of all amounts ordinarily contributed by an employee and by the county for age and service annuity and widow's annuity based on the salary at date of disability, the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is deemed for annuity and refund purposes as amounts contributed by him. The county shall also contribute ½ of 1% salary deductions required as a contribution from the employee under Section 9-133.

An employee who has withdrawn from service or was laid off for any reason, who is absent from service thereafter for 60 days or more who re-enters the service subsequent to such absence is not entitled to ordinary disability benefit unless he renders at least 6 months of service subsequent to the date of such last re-entry.

40 ILCS 5/9-157.

Section 9-108 of the Pension Code provides that the following "employees" are entitled to benefits under the Pension Code:

(a) Any employee of the county employed in any position in the classified civil service of the county, or in any position under the County Police Merit Board as a deputy sheriff in the County Police Department. * * *

(b) Any employee of the county employed in any position not included in the classified civil service of the county whose salary or wage is paid in whole or in part by the county
* * *

(c) Any county officer elected by vote of the people, including a member of the county board, when such officer elects to become a contributor.

(d) Any person employed by the board.

(e) Employees of a County Department of Public Aid in counties of 3,000,000 or

40 ILCS 5/9-108.

2. Statutory Interpretation

“[T]he primary objective . . . in construing the meaning of a statute is to ascertain and give effect to the intention of the legislature.” In re Detention of Lieberman, 201 Ill. 2d 300, 307 (2002). “All other rules of statutory construction are subordinate to this cardinal principle. Id. “When the language of a statute is clear and unambiguous, a court must give effect to the plain and ordinary meaning of the language without resort to other tools of statutory construction.” Raintree Homes, Inc. v. Village of Long Grove, 209 Ill. 2d 248, 255 (2004).

“One of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole. Words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute.” Id. at 255-56, quoting, Michigan Ave. Nat’l Bank v. County of Cook, 191 Ill. 2d 493, 504 (2000). A court must construe a statute “so that each word, clause or sentence is given reasonable meaning and not deemed superfluous.” Id. at 256.

3. Whether a Former Employee is Entitled to Receive Disability Benefits

The Board contends that Plaintiff no longer had any right to collect disability benefits once his employment with the County was terminated. Article 9 of the Pension Code is clear that an “employee” who “is employed” by the County is entitled to receive disability benefits under the Pension Code. 40 ILCS 5/9-108; 40 ILCS 5/9-197. The Pension Code does not, however, contain any language which would support the continuance of disability benefits following termination of employment. Nor does the Pension Code contain any language defining a former employee as an “employee” for purposes of disability benefits.

Additionally, while Article 9 of the Pension Code contains definitions for “employee,” “present employee,” and “future entrant,” 40 ILCS 5/9-108; 40 ILCS 5/9-109; 40 ILCS 5/9-110, it contains no definition for “former employee” or “past employee” or “terminated employee.” Plaintiff has not identified any section of Article 9 of the Pension Code which supports the payment of disability benefits to a person no longer employed by the County.

The court further notes that where the legislature has intended former employees to be eligible to receive benefits, the legislature has clearly used such language. See, e.g., 40 ILCS 5/6-106 (defining a “fireman” as “any person who (a) *was*, is or shall be employed by a City”)(emphasis added). The definitions of Article 9 contain no such language. A court should

presume that when the legislature uses certain language in one part of a statute and different language in another part, different meanings were intended. People v. Davis, 2012 IL App (2d) 100934, ¶14; Gutraj v. Bd. Of Trustees of Police Pension Fund of Vill. of Grayslake, Illinois, 2013 IL App (2d) 121163, ¶8.

Finally, Article 9 of the Pension Code defines a “disability” as “a physical or mental incapacity as the result of which *an employee* is unable to perform the duties of his position.” 40 ILCS 5/9-113 (emphasis added). Section 9-113 does not include former employees within this definition of disability.

Article 9 of the Pension Code is clear that a person must be employed by the County to receive disability benefits. This is a necessary threshold to receiving disability benefits. Plaintiff has failed to identify any statutory provision providing otherwise. Nor has Plaintiff identified any case law holding that he is entitled to receive disability benefits as a former employee. Therefore, upon the County’s termination of his employment, Plaintiff was no longer entitled to receive disability benefits under the Pension Code.

While Plaintiff argues that benefits can only be terminated under certain circumstances, 40 ILCS 5/9-157, §9-157 of the Pension Code addresses triggering events that terminate an *employee’s* benefits. Plaintiff is not an employee and, therefore, not entitled to receive any benefits.

As discussed above in connection with the County’s motion to dismiss, Plaintiff had no right to continued employment with the County and there is no legal basis for ordering the reinstatement of his employment. Therefore, Plaintiff can only prevail on his claims against the Board in Counts I, II, III and IV of the Complaint if a former employee is entitled to receive disability benefits. As Article 9 of the Pension Code does not provide for the payment of disability benefits to former employees, Counts I, II, III and IV fail as a matter of law.

The Pension Clause of the Illinois Constitution cannot save Plaintiff’s claims. The Pension Clause does not create any additional rights, but protects only those rights granted by contract or statute. Matthews v. Chicago Transit Authority, 2016 IL 117638, ¶59. There is no contract or statute that grants a former County employee the right to receive disability benefits.

Counts I, II, III and IV are dismissed with prejudice pursuant to §2-619.

B. Section 2-615

The Board also contends that Plaintiff’s claims should be dismissed pursuant to §2-615.

1. Counts I and II (Declaratory Judgment)

Counts I and II seek declaratory judgment against the Board. In order to maintain an action for declaratory judgment, a plaintiff must possess a legal tangible interest. Record-A-Hit, 377 Ill. App. 3d at 645. As a former employee of the County, Plaintiff has no legal tangible

interest in continuing disability benefit payments. Therefore, Counts I and II fail to state a claim as a matter of law.

2. Counts III and IV (Mandamus)

Counts III and IV of the Complaint seek writs of *mandamus* against the Board. In order to maintain an action for a writ of *mandamus*, a plaintiff must have a protectable legal interest and a clear right to the relief sought. Lombard Historical Comm'n, 366 Ill. App. 3d at 717; Noyola, 179 Ill. 2d at 133. As a former employee of the County, Plaintiff has no protectable legal interest in receiving disability benefits and no clear right to such benefits. Therefore, Counts III and IV fail to state a claim as a matter of law.

3. Count V (Violation of the Fourteenth Amendment and §1983).

Count V of the Complaint alleges that the termination of his disability benefits by the Board without any hearing violated Plaintiff's right to due process under the Fourteenth Amendment of the U.S. Constitution and constituted a violation of 42 U.S.C. §1983. In order to be entitled to procedural due process, a plaintiff must possess a protectable interest in the form of life, liberty or property. Chicago Teachers Union Local No.1 v. Board of Educ., 2012 IL 112566, ¶12; Balmoral Racing Club, Inc. v. Illinois Racing Bd., 151 Ill. 2d 367, 405 (1992); Jackson v. City of Chicago, 2012 IL App (1st) 111044. If there is no protectable interest, there is no due process claim. Id.

"[A] property interest is involved only if 'a person clearly [has] more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.'" Petersen v. Chicago Plan Comm'n v. City of Chicago, 302 Ill. App. 3d 461, 467 (1st Dist. 1998), quoting, Board of Regents v. Roth, 408 U.S. 564, 577 (1972).

As discussed above, Plaintiff has no legitimate claim of entitlement to disability benefits as a former employee of the County. Therefore, he was not entitled to any procedural due process and cannot maintain a claim under the Fourteenth Amendment or §1983.

4. Requests for Attorney's Fees

Finally, the Board argues that there is no legal basis for the requests for attorney's fees made in Counts I, II, III and IV. While this issue is moot given that Counts I, II, III and IV fail as a matter of law, the Board is correct.

IV. Conclusion


The County's Motion to Dismiss is granted with prejudice pursuant to §2-619 and §2-615.

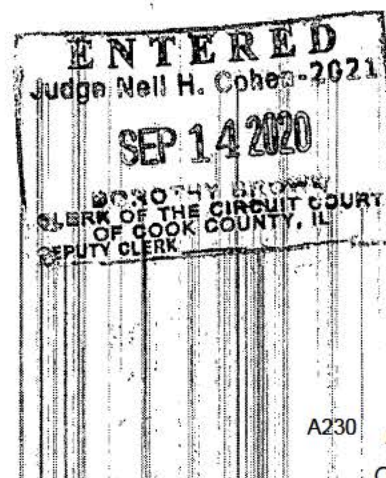
The Board's Motion to Dismiss is granted with prejudice pursuant to §2-619 and §2-615.

The status date of September 28, 2020 is stricken.

This order is final and appealable.

Enter: 9.14.20


Judge Neil H. Cohen



C 8

any unit of local government or school district of the State, ‘it cannot be diminished or impaired.’” *Carmichael v. Laborers’ & Retirement Bd. Employees’ Annuity & Benefit Fund*, 2018 IL 122793, ¶ 25 (citation omitted). This includes all pension benefits that flow directly from membership, including disability coverage.

4. O’Connell is caught in a catch-22 because of the actions of the Board and the County. The Board asserts that it terminated O’Connell’s disability benefits because the County refused to continue his status as an employee. The County refused to continue O’Connell’s status as an employee because he cannot return to work, which is inevitable for an individual like O’Connell who is completely disabled.

5. The Pension Code does not require O’Connell’s continued status as an employee to be eligible for the continuation of disability benefits. Terminating his disability benefits violates the Pension Code and the Pension Clause. In the alternative, the County’s termination of O’Connell violated the Pension Code and Pension Clause because it caused the termination of the disability benefits to which he is entitled. Additionally, the termination of O’Connell’s disability benefits without any notice or an opportunity to be heard violated O’Connell’s right to procedural due process.

SUMMARY OF ACTION

6. O’Connell began employment with the County in 1999 and became a participant in the County Employees’ and Officers’ Annuity and Benefit Fund (the “**County Pension Fund**”). In 2001, while working for the County, O’Connell was diagnosed with multiple sclerosis (“**MS**”). He worked for a number of years with accommodations as his health declined, until the end of 2016 when his health had degenerated to the point that he could no longer work.

7. Unable to work, O'Connell took a leave from his position with the County in early 2017 and applied to the Board for the disability benefits that he was promised under the Pension Code. The Pension Code guaranteed O'Connell disability benefits for a period of time (not to exceed five years) based on his years of service if he met certain criteria. O'Connell met the eligibility criteria. The Board, which administers disability benefits under the Pension Code, granted his application for disability benefits and his subsequent applications for the continuation of disability benefits. A representative of the Board has told O'Connell that based on his years of service, he was eligible to receive disability benefits until approximately August 2021.

8. In May 2019, shortly after the Board approved O'Connell's most recent application for the continuation of disability benefits, the County sent O'Connell a letter demanding that he provide a return-to-work date and threatening administrative separation should he fail to provide one. O'Connell contacted the Board and was told that it would end his disability benefits if the County terminated him. O'Connell told the County that he could not provide a return-to-work date because he was unable to work. He asked that the County continue his employment status for the period of time for which he was eligible to receive disability benefits. The County refused, disclaiming any role in the Board's administration of disability benefits, and administratively separated O'Connell on July 1, 2019.

9. Following O'Connell's administrative separation, the Board stopped paying him disability benefits without any notice. O'Connell called the Board, a representative of which told O'Connell that continued employment with the County is required for the continuation of disability benefits.

10. The Board is wrong. Nothing in the Pension Code imposes that requirement. The Board's termination of O'Connell's disability benefits on that basis violated the Pension Code and Article XIII, Section 5 of the Illinois Constitution.

11. In the alternative, if continued employment with the County is required for the continuation of disability benefits, the County's administrative separation of O'Connell before the end of the period in which he is entitled to receive disability benefits violated the Pension Code and Article XIII, Section 5 of the Illinois Constitution.

12. The Board's termination of O'Connell's disability benefits without notice or an opportunity to be heard also deprived O'Connell of his right to procedural due process guaranteed to him by the U.S. Constitution and in violation of 42 U.S.C. § 1983.

PARTIES

13. Plaintiff O'Connell is an individual who was an employee of the County from 1999 through July 2019 and a contributor to the County Pension Fund.

14. Defendant Board is a board of trustees created and governed by Article 9 of the Pension Code. The Board is authorized to carry out the Pension Code's provisions related to the County Pension Fund. 40 ILCS 5/9-185. Its powers and duties include "authoriz[ing] or suspend[ing] the payment of any annuity or benefit in accordance with" the Pension Code. 40 ILCS 5/9-196.

15. Defendant County is a governmental entity within the State of Illinois. The County employed O'Connell from 1999 through 2019.

JURISDICTION AND VENUE

16. The Court has subject matter jurisdiction for violations of the Illinois Constitution and violation of the Illinois Pension Code, 40 ILCS 5/1-115.

17. Venue is proper in the Circuit Court of Cook County, Illinois, pursuant to 735 ILCS 5/2-101, in that, among other things, the transactions, or some part thereof, out of which the causes of action arose, occurred in Cook County, Illinois.

ALLEGATIONS

Disability Benefits under the Pension Code

18. Article 9 of the Pension Code established the County Pension Fund and sets forth the pension, disability, and other benefits for employees of the County and the Forest Preserve District of Cook County. 40 ILCS 5/9-101 *et. seq.*

19. The Pension Code provides for two types of disability benefits, “duty disability benefits” for employees who are disabled as a result of an injury that occurs while working, and “ordinary disability benefits” for employees who become disabled as a result of a cause other than an injury while working.

20. As relevant here regarding “ordinary disability benefit,” the Pension Code provides:

An employee . . . who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof.

40 ILCS 5/9-157.

21. Under the Pension Code, “[e]mployee[,]” “contributor[,]” and “participant” have the same definition. 40 ILCS 5/9-108.

22. There are at least three benefits guaranteed to a disabled employee under the Pension Code while collecting disability benefits. First, the Board issues payments to disabled employees from the County Pension Fund in the amount of “50% of the employee’s salary at the

date of disability.” 40 ILCS 5/9-157. The payments provided for in Section 9-157 as part of the disability benefits are referred to herein as the “**Disability Benefit Payments.**”

23. Second, the Pension Code requires that the County contribute on behalf of the disabled employee to the County Pension Fund:

Instead of all amounts ordinarily contributed by an employee and by the county for age and service annuity and widow’s annuity based on the salary at date of disability, the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is deemed for annuity and refund purposes as amounts contributed by him. The county shall also contribute ½ of 1% salary deductions required as a contribution from the employee under Section 9-133.

40 ILCS 5/9-157.

24. Third, the County must also “contribute all amounts ordinarily contributed by it for annuity purposes for any employee receiving ordinary disability benefit as though he were in active discharge of his duties during such period of disability.” 40 ILCS 5/9-181. The contributions by the County required by Sections 9-157 and 9-181 are referred to herein as the “**County Contributions.**”

25. The Pension Code also provides at least two additional benefits if an employee has exhausted his credits for disability benefits and continues to be disabled. First, he “shall have the right to contribute to the fund at the current contribution rate for a period not to exceed a total of 12 months during his entire period of service and to receive credit for all annuity purposes for any such periods paid for.” 40 ILCS 5/9-174. This disability benefit is referred to herein as the “**Credit Purchase Option.**”

26. Second, if the employee has exhausted his credits for disability benefits and withdraws before age 60 while still disabled, he “is entitled to receive the annuity provided from the total sum accumulated to his credit from employee contributions and county contributions to

be computed as of his age on the date of withdrawal.” 40 ILCS 5/9-160. This disability benefit is referred to herein as the “**Early Annuity Option.**”

27. There are five dates set forth in Section 9-157 of the Pension Code upon which the disability benefits “shall cease”:

- (a) the date disability ceases.
- (b) the date the disabled employee attains age 65 for disability commencing prior to January 1, 1979.
- (c) the date the disabled employee attains 65 for disability commencing prior to attainment of age 60 in the service and after January 1, 1979.
- (d) the date the disabled employee attains the age of 70 for disability commencing after attainment of age 60 in the service and after January 1, 1979.
- (e) the date the payments of the benefit shall exceed in the aggregate, throughout the employee’s service, a period equal to $\frac{1}{4}$ of the total service rendered prior to the date of disability but in no event more than 5 years. In computing such total service any period during which the employee received ordinary disability benefit and any period of absence from duty other than paid vacation shall be excluded.

40 ILCS 5/9-157. Subsection (e) of Section 9-157 is referred to herein as the “**Years of Service Credits.**”

28. Additionally, the disability benefits are “not payable” if the disabled employee (a) refuses to submit to an examination by a board-appointed physician; (b) receives any part of his salary, or while employed by any public body supported in whole or in part by taxation; or (c) receives certain payments from the County under the Workers’ Compensation Act or Workers’ Occupational Diseases Act. 40 ILCS 5/9-159.

The County and the Board’s Premature Termination of O’Connell’s Disability Benefits

29. O’Connell started employment with the County in the summer of 1999. As an employee of the County, O’Connell was a contributing member of the County Pension Fund.

30. While employed by the County, O'Connell was diagnosed with MS. After working for several years with accommodations, O'Connell became unable to work due to his MS at the end of 2016. Among other symptoms, O'Connell could no longer stand or walk and suffered from extreme fatigue.

31. O'Connell exhausted his accrued paid leave and took a leave from his position with the County in January 2017. He applied for and began receiving disability benefits from the County Pension Fund.

32. O'Connell was and is entitled to receive disability benefits, including Disability Benefit Payments and County Contributions, until the end of his Years of Service Credits, because none of the other events set forth in Sections 9-157 (quoted in ¶ 27 above) applies or will apply to him.

33. His disability has not and will not cease, and he will not meet the conditions set forth in Section 9-157 (b)-(d). 40 ILCS 5/9-157(a)-(e). The three circumstances in Section 5/9-159 (quoted in ¶ 28 above) in which disability benefits are "not payable" likewise do not apply to O'Connell.

34. Upon information and belief, based on his Years of Service Credits, O'Connell was eligible for disability benefits through approximately August 2021. At the end of that period, he would be entitled to the Early Annuity Option and Credit Purchase Option.

35. Under the Pension Code, a disabled employee must periodically re-apply for the continuation of disability benefits. O'Connell has done so, and the Board has approved all of his applications. Most recently, on May 2, 2019, the Board granted O'Connell's application for a continuation of disability benefits through November 30, 2019. (Exhibit A.)

36. Two weeks later, on May 16, 2019, Simone McNeil, Deputy Bureau Chief for Cook County's Bureau of Human Resources ("**County Human Resources**"), sent O'Connell a letter requesting that he provide medical documentation indicating his expected return to work date. (Exhibit B.) The letter stated that the County would administratively separate O'Connell on May 29, 2019, if he did not provide the requested documentation or if was not released to return to work. (*Id.*)

37. O'Connell was surprised to receive this letter as he does not recall receiving any request from the County regarding a return-to-work date before the May 16, 2019 letter, and he had previously informed his department and County Human Resources that he would be unable to return to work. Additionally, the "Disability Provisions" of the Cook County Personnel Rules state that an employee need only notify their department heads of their readiness to return to work "before the termination dates of their disability leaves[.]" (Exhibit C at 43 (excerpt)), and the Board had just determined that O'Connell was entitled to receive disability benefits through at least November 30, 2019 (and was entitled to apply for disability benefits for a period of time after November 30, 2019 based on his years of service), (Exhibit A).

38. After receiving this letter, O'Connell called the Board to ask about the impact of his potential administrative separation on his ability to receive disability benefits. A representative of the Board told O'Connell that his disability benefits would end if the County terminated him as an employee.

39. O'Connell was unable to provide the documentation County Human Resources requested because he is unable to return to work. By a letter dated May 23, 2019, O'Connell informed County Human Resources that he could not provide the requested documentation and that the Board had recently approved his application to receive disability benefits through

November 30, 2019. (Exhibit D.) He also told County Human Resources that a representative of the Pension Fund had told him that his disability benefits would end upon the termination of his employment with the County. O'Connell requested that his employment be continued for the duration of the period in which he was entitled to collect disability benefits based on his years of service. (*Id.*)

40. McNeil responded in a letter dated June 13, 2019. (Exhibit E.) She stated that "all determinations regarding [O'Connell's] disability benefits fall solely within the discretion of the Pension Fund, which is a separate legal entity from the Cook County Offices under the President, [O'Connell's] employer." (*Id.*) McNeil again asked Mr. O'Connell to provide documentation indicating his return to work date and gave him until June 29, 2019, to do so.

41. O'Connell remained unable to provide the requested documentation because of his disability and was administratively separated effective July 1, 2019, by a letter from McNeil dated July 3, 2019. (Exhibit F.)

42. Following his administrative separation, O'Connell received a check from the Pension Fund with disability payments for one day of July. He did not receive any notification from the Pension Fund that his disability benefits were terminated.

43. Upon information and belief, the County has ceased making the County Contributions provided for in the Pension Code as part of the disability benefits.

44. Because O'Connell did not reach the end of the period of time in which he would be eligible to receive disability benefits based on his years of service, he was not provided the Credit Purchase Option or the Early Annuity Option.

45. On July 24, 2019, O'Connell, through counsel, sent Margaret Fahrenbach, Legal Advisor to the Board, a letter objecting to the termination of his disability benefits and requesting

their reinstatement. Fahrenbach responded that the Board's position is that continued employment status is required for the continuation of disability benefits. However, she also said that O'Connell's request was being reviewed by outside counsel. Despite repeated requests over several months, the Board has not provided a response to O'Connell's request for reinstatement of his disability benefits as of the date of the filing of this Complaint.

46. On August 7, 2019, O'Connell, through counsel, sent a letter to County Human Resources requesting reinstatement of his employment with the County so that he could continue to receive disability benefits for the duration of the period of time he was entitled to disability benefits based on his years of service. By a letter dated August 23, 2019, Velisha Haddox, the Bureau Chief of County Human Resources, denied the request, stating that "[t]he Bureau's decision to administratively separate Mr. O'Connell is unrelated to the Cook County Pension and Annuity Fund, a separate legal entity from Cook County Offices Under the President." (Exhibit G.)

COUNT I

Declaratory Judgment And Other Relief Against the Board and the County

47. O'Connell restates and incorporates the allegations in Paragraphs 1 through 46 as if fully set forth herein.

48. O'Connell seeks a determination pursuant to 735 ILCS 5/2-701 that (i) continued employment with the County is not required under the Pension Code for the continuation of disability benefits; and (ii) Defendants' termination of O'Connell's disability benefits violated the Pension Code and the Illinois Constitution.

49. There exists an actual, immediate, and justiciable dispute between O'Connell, on the one hand, and Defendants, on the other hand, as required under 735 ILCS 5/2-701, because

Defendants have ceased providing O'Connell disability benefits based on the termination of his employment with the County in violation of the Pension Code and the Illinois Constitution.

50. As set forth above, a disabled employee "is entitled to ordinary disability benefit during such disability" unless one of the events in Sections 9-157 and 9-159 causing the termination of disability benefits occurs. Neither section states that the termination of employment causes disability benefits to "cease" or become "not payable." There is no basis in the Pension Code for the Board's requirement for continued employment with the County for the continuation of disability benefits, and any such rule or requirement is null and void. It also defies common sense because a person who is completely disabled cannot work, yet disability benefits are plainly intended for such persons by the Pension Code.

51. As set forth above, absent the Board's "continued-employment" requirement, O'Connell would continue to receive disability benefits until the end of his Years of Service Credits. Upon information and belief, at the time O'Connell's disability benefits were terminated, he was eligible to receive disability benefits, including Disability Benefit Payments and County Contributions, for approximately two more years. At the end of that period, he would be entitled to the Early Annuity Option and Credit Purchase Option.

52. Defendants' termination of O'Connell's disability benefits violated the Pension Code and the Illinois Constitution because they deprived O'Connell of the disability benefits to which he was entitled, including Disability Benefit Payments, County Contributions, the Early Annuity Option, and the Credit Purchase Option.

WHEREFORE, O'Connell respectfully prays that this Court enter judgment:

- A. Declaring that continued employment with the County is not required under the Pension Code for the continuation of disability benefits;
- B. Declaring that Defendants' termination of O'Connell's disability benefits due to the termination of his employment with the County violated the Pension Code and the Illinois Constitution;
- C. Ordering Defendants to provide O'Connell disability benefits effective retroactively to July 2, 2019, until one of the specifically enumerated events in 40 ILCS 5/9-157(a)-(e) or 40 ILCS 5/9-159 occurs;
- D. Awarding O'Connell interest, including equitable interest, and attorneys' fees and costs; and
- E. Granting O'Connell such further relief as the Court deems just and proper.

COUNT II¹

Declaratory Judgment And Other Relief Against the County and the Board

53. O'Connell restates and incorporates the allegations in Paragraphs 1 through 46 as if fully set forth herein.

54. Because the Board requires continued employment with the County for the continuation of disability benefits, the County's administrative separation of O'Connell violated the Illinois Pension Code, 40 ILCS 5/9-101 et seq., and the Pension Protection Clause, Article XIII, Section 5, of the Illinois Constitution because of its known effect on O'Connell's disability benefits.

¹ Count II is pleaded in the alternative to Count I.

55. As set forth above, if O’Connell were still employed by the County, O’Connell would be eligible to continue to receive disability benefits until the end of his Years of Service Credits, even though he could not physically provide services as an employee. Upon information and belief, at the time O’Connell’s disability benefits were terminated, he was eligible to receive disability benefits, including Disability Benefit Payments and County Contributions, for approximately two more years. At the end of that period, he would be entitled to the Early Annuity Option and Credit Purchase Option.

56. Cook County’s administrative separation of O’Connell caused the immediate termination of the disability benefits to which he would otherwise be entitled, including Disability Benefit Payments, County Contributions, the Early Annuity Option, and the Credit Purchase Option, thereby “diminish[ing] or impair[ing]” O’Connell’s right to disability benefits under the Pension Code.

WHEREFORE, O’Connell respectfully prays that this Court enter judgment:

- A. Declaring that the County’s administrative separation of O’Connell violated the Pension Code and the Illinois Constitution;
- B. Ordering the County to reinstate O’Connell as a County employee, effective retroactively to July 2, 2019, until he is no longer eligible to receive disability benefits under the Pension Code, and granting him all of the benefits attendant to employment with County;
- C. Ordering Defendants to provide O’Connell disability benefits effective retroactively to July 2, 2019, until one of the specifically enumerated events in 40 ILCS 5/9-157(a)-(e) or 40 ILCS 5/9-159 occurs;

- D. Awarding O'Connell interest, including equitable interest, and attorneys' fees and costs; and
- E. Granting O'Connell such further relief as the Court deems just and proper.

COUNT III

Mandamus Against the Board and the County

57. O'Connell restates and incorporates the allegations in Paragraphs 1 through 52 as if fully set forth herein.

58. There is no provision in the Pension Code that requires the termination of disability benefits upon the termination of a disabled employees' employment with the County.

59. Defendants have no discretion to deny O'Connell continued disability benefits based on his employment status with the County.

60. O'Connell has requested, and Defendants have refused, to reinstate his disability benefits.

61. O'Connell has a clear right to continue to receive disability benefits under the Pension Code and the Illinois Constitution.

62. The Defendants have a clear duty to provide O'Connell the disability benefits to which he is entitled and the clear authority to do so under the Pension Code and Illinois Constitution.

WHEREFORE, O'Connell respectfully prays that this Court enter judgment:

- A. Issuing a writ of *mandamus* ordering
 - i. The Board to reinstate O'Connell's disability benefits effective retroactively to July 2, 2019, including the Disability Benefit Payments and any other benefits to which he is entitled under the Pension Code; and

- ii. The County to reinstate all contributions or benefits related to O'Connell's disability benefits, including the County Contributions, effective retroactively to July 2, 2019;
- B. Awarding O'Connell interest, and equitable interest, and attorneys' fees and costs; and
- C. Granting O'Connell such further relief as the Court deems just and proper.

COUNT IV²

Mandamus Against the County and the Board

63. O'Connell restates and incorporates the allegations in Paragraphs 1 through 46 and 53 through 56 as if fully set forth herein.

64. Because the Board requires continued employment with the County for the continuation of disability benefits, the County must maintain O'Connell in employed status until he is no longer eligible to receive disability benefits under the Pension Code.

65. The County has no discretion to refuse to maintain O'Connell's employed status while he is receiving disability benefits.

66. O'Connell has requested, and the County has refused, to reinstate him as a County employee.

67. O'Connell has requested, and Defendants have refused, to reinstate his disability benefits.

68. O'Connell has a clear right to remain an employee of the County in order to continue to receive disability benefits to which he is entitled under the Pension Code and the Illinois Constitution.

² Count IV is pleaded in the alternative to Count III.

69. The County has a clear duty to maintain O'Connell as an employee and Defendants have a clear duty to provide O'Connell the disability benefits to which he is entitled and the clear authority to do so under the Pension Code and Illinois Constitution.

WHEREFORE, O'Connell respectfully prays that this Court enter judgment:

- A. Issuing a writ of *mandamus* ordering
 - i. The County to reinstate O'Connell as a County employee, effective retroactively to July 2, 2019, until he is no longer eligible to receive disability benefits under the Pension Code;
 - ii. The Board to reinstate O'Connell's disability benefits effective retroactively to July 2, 2019, including the Disability Benefit Payments and any other benefits to which he is entitled under the Pension Code; and
 - iii. The County to reinstate all contributions and benefits related to O'Connell's disability benefits, including the County Contributions, effective retroactively to July 2, 2019;
- B. Awarding O'Connell interest, including equitable and attorneys' fees and costs; and
- C. Granting O'Connell such further relief as the Court deems just and proper.
- D. costs; and
- E. Granting O'Connell such further relief as the Court deems just and proper.

COUNT V

Violation of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983

Against the Board

70. O'Connell restates and incorporates the allegations in Paragraphs 1 through 69 as if fully set forth herein.

71. O'Connell had a protected property interest in his disability benefits.

72. The Board terminated O'Connell's disability benefits without a pre- or post-deprivation hearing, guaranteed to him by the U.S. Constitution and in violation of 42 U.S.C. § 1983, and deprived him of rights guaranteed to him under the Due Process Clause of the Fourteenth Amendment.

73. O'Connell has suffered damages as a result.

WHEREFORE, O'Connell respectfully prays that this Court grant O'Connell the following relief on Count V:

- A. Judgment for compensatory damages in an amount to be determined at trial;
- B. An order requiring Defendants to provide O'Connell disability benefits until one of the specifically enumerated events in 40 ILCS 5/9-157(a)-(e) or 40 ILCS 5/9-159 occurs;
- C. An award of the costs of this action, including reasonable attorney's fees, in accordance with 42 U.S.C. § 1988; and
- D. Any other relief that this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury of all claims and/or issues triable by a jury.

Respectfully submitted,

JOHN O'CONNELL

By: /s/ Michael L. Shakman
One of his attorneys

Michael L. Shakman
Mary Eileen C. Wells
Miller Shakman Levine & Feldman LLP
180 North LaSalle Street
Suite 3600
Chicago, IL 60601
(312) 236-3700
Firm ID: 90236

EXHIBIT A



May 2, 2019

Office #152896

JOHN R O'CONNELL
1120 LAS BRISAS DR
MINDEN, NV 89423-4244

Dear Sir/Madam:

Your application for a continuation of ordinary disability benefits was presented to the Retirement Board on May 2, 2019. Your request for ordinary disability benefits was granted by the Board.

Your Benefits Information

- Your ordinary disability benefits payment period is December 1, 2018 through November 30, 2019 at a rate of \$125.96 per day.
- The amount of the full ordinary disability benefits is equal to 50% of your salary at the date of injury/illness.
- To continue these benefits beyond the dates specified, you must request and complete a "continuation of benefits" application.

Enclosed is the payment for disability benefits now due. Any future payments will be mailed on the last day of the month. If the last day of the month falls on a weekend, the check will be mailed the last business day of the month.

Regards,

Disability Benefits Department
DMD



EXHIBIT B



BUREAU OF HUMAN RESOURCES

VELISHA L. HADDIX

BUREAU CHIEF

118 North Clark Street, Room 840 • Chicago, Illinois 60602 • (312) 603-3300

TONI PRECKWINKLE

PRESIDENT

**Cook County Board
of Commissioners**

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SCOTT R. BRITTON

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KEVIN B. MORRISON

15th District

JEFFREY R. TOBOLSKI

16th District

SEAN M. MORRISON

17th District

May 16, 2019

John O'Connell

1120 Las Brisas Drive

Minden, Nevada 89423

Re: Expected Return to Work Date

Dear Mr. O'Connell,

You have been away from work on a medical leave of absence since 01-10-2017 with no projected return to work date. By May 29, 2019 you are required to please provide medical documentation indicating your expected return to work date to Renee Carrion, Personnel Services Manager. Ms. Carrion's contact information is as follows:

Telephone (312) 603-5981

Fax (312) 603-3747

Email Renee.Carrion@cookcountyil.gov

If you are released to return to work on a limited basis and wish to seek a reasonable accommodation, please complete the attached Reasonable Accommodation Request Form and submit it along with supporting medical documentation to the attention of Piemengie Hamisu, Acting EEO Officer by May 29, 2019. Ms. Hamisu's contact information is as follows:

Telephone (312) 603-1314

Fax (312) 603-0253

Email Piemengie.Hamisu@cookcountyil.gov

If the requested documentation is not timely received or if you are not medically released to return to work in any capacity by May 29, 2019 you will be administratively separated that same day.

Feel free to contact me with any questions at 312-603-6121.

Very truly yours,

Simone McNeil

Deputy Bureau Chief

EXHIBIT C

COUNTY OF COOK

PERSONNEL RULES

IMPORTANT NOTICE

These Human Resources Rules are issued pursuant to the Human Resources Ordinance enacted as amended on April 5, 2000 and October 17, 2000 by the Cook County Board of Commissioners. The Ordinance directs the Chief of the Human Resources to issue rules. The Rules reflect procedures developed to comply with applicable federal, state and county laws and ordinances, the Judgment and Consent Decrees entered in Michael L. Shakman, et.al. v. The Democratic Organization of Cook County, et.al., No. 69 C 2145 on January 5, 1994 and other applicable statutes. In the event that provisions of these Rules vary from the terms of effective collective bargaining agreements, the terms of those agreements shall govern for affected members of the collective bargaining unit.

Please be advised that these Rules do not constitute a contract, and the language used in these Rules is not intended to create or to be construed as a contract or promise of continued employment. The Rules set forth general information and guidelines and do not purport to address every situation or contingency. Employees should direct questions about policies, programs or other applications of these Rules to the Bureau of Human Resources or other appropriate department. Employees should also be advised that the County Board has enacted Ordinances and that the President has promulgated Executive Orders from time to time and that they apply to all County employees. They appear in the Appendix to these rules and are hereby incorporated by reference. They include, without limitation, policies on Ethics, Human Rights, Domestic Violence, Drug-Free Workplace and Sexual Harassment. Employees should consult the Orders and Ordinances for their full text.

Please also be advised that the Ordinance empowers the County Board and the Chief of the Human Resources Bureau to enact amendments, revisions and changes to these Rules. The authority of the Chief of Human Resources to revise these Rules and promulgate new ones in accordance with the Human Resources Ordinance shall not be limited, circumscribed or otherwise affected by these Rules. Employees should consult the Rules from time to time to familiarize themselves with any revisions or additions to these Rules.

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should contact the Human Resources Leave Coordinator with questions pertaining to Family Military Service Leave.

(e) **Victims' Economic Security and Safety Act (VESSA)**

An employee who is a victim of domestic or sexual violence (sexual assault or stalking) or an employee who has a family or household member who is a victim of domestic or sexual violence whose interests are not adverse to the employee as it relates to the domestic or sexual violence may be eligible to take VESSA leave from the first day of employment if the employee or employee's family or household member is experiencing an incident of domestic or sexual violence or to address domestic or sexual violence as provided in the County's VESSA Leave Policy. Employees seeking VESSA leave should notify the BHR Leave Coordinator at least forty-eight (48) hours in advance of taking VESSA leave, unless such notice is not practicable. If such notice is not practicable, then the employee must provide notice of VESSA leave within a reasonable time period.

Employees may request VESSA leave through the Cook County Time and Attendance (CCT) System or by submitting a completed VESSA Leave Request Form to the BHR Leave Coordinator. The employee must provide proper certification and supporting documentation to the BHR Leave Coordinator. Failure to provide proper certification and documentation may result in delay or denial of leave. For more information, please see the County's Victims' Economic Security and Safety Act Leave Policy.

6.4 DISABILITY PROVISIONS

Employees should contact the Cook County Annuity and Benefit Fund ("Fund") to obtain an application, benefit information, eligibility rules and other documentation pertaining to ordinary or duty-related disability.

(a) **Ordinary Disability**

Ordinary disability is the result of injury or illness due to any cause other than that incurred in the performance of an act of duty. Employees seeking ordinary disability benefits are required to use all accrued paid leave (sick, personal and vacation) before any disability payment can be made by the Fund.

Employees must also inform their supervisors and department heads of their intention to apply for disability, as well as the length and terms of any benefits granted by the Fund. Employees must notify their department heads of their readiness to return to work before the termination dates of their disability leaves. In all cases, employees must notify their department heads within one business day after being released for duty by a physician or the expiration of benefits, whichever comes first.

An employee who is on official disability leave and returns to work within 60 calendar days after disability leave is terminated shall be eligible to receive the salary paid at the time disability leave started, provided the budget of the department can accommodate the salary and, if not, the employee shall be eligible to have the salary received at the time disability leave started restored at the earliest possible date.

(b) Duty-Related Disability

Duty-related disability results from injury or illness that arises out of and in the course of employment and in accordance with the Illinois Worker's Compensation Act, 820 ILCS 305, *et seq.*

1. It is the responsibility of injured employees to report any injury, regardless of severity, as soon as possible to their supervisor. The responding supervisor should ensure that the employee is provided with the appropriate medical response to the injury. The supervisor may, depending on the nature of the injury, request outside medical response to the situation. Once the injured employee provides verbal notice, the supervisor or manager is responsible for reporting the claim to the Department of Risk Management.
2. Cook County Department of Risk Management is responsible for the administration and payment of Worker's Compensation benefits for injuries or illness sustained in the course and scope of employment with Cook County. The Department of Risk Management performs these duties in accordance with the Illinois Workers' Compensation Act.
3. The injured worker is required to cooperate with the Department of Risk Management and at a minimum, must provide written medical updates within 24 hours of any evaluation and updated medical information and work restrictions every 30 days or as otherwise requested. The work restrictions should be shared with the employing department, and the employing department should make an effort to provide modified duty as outlined in the work restrictions.
4. Any employee who is off duty and receiving supplemental temporary total disability may be eligible to receive duty disability benefits as provided under the provisions of the Cook County Employees Annuity and Disability Fund. Separate application must be made with the Fund.
5. No employee shall return to duty after having been carried on supplemental temporary total disability or on temporary total disability compensation without a physician's approval to return to work and authorization from Cook County.
6. Employees on approved duty-disability leave will accrue paid time off in the same manner as afforded in the normal course of County Employment.

EXHIBIT D

Date: May 23, 2019

To: Simone McNeil, Deputy Director, Bureau of Human Resources

From: John O'Connell (County Employee No. 373292)

CC: President Toni Preckwinkle

Commissioner John Daley, Chairman, Finance Committee

Velisha Haddox, Bureau Chief, Human Resources

Renee Carrion, Personnel Services Manager

Piemengie Hamisu, Acting EEO Officer

Dear Ms. McNeil,

I tried reaching you by telephone but I was unable to do so. Therefore, I am submitting this letter as a written request.

I received your attached May 16, 2019, letter stating that I must provide medical documentation indicating my expected return to work date by May 29, 2019, and that I will be terminated if I am not medically released to return to work by May 29, 2019.

I have attached a May 2, 2019, letter from the Cook County Pension Fund showing that my application for continuation of disability benefits due to my Multiple Sclerosis was approved by the Retirement Board on May 2, 2019, for a period ending November 30, 2019. Under the Pension Fund's disability rules, with the number of years of my County service, I am eligible for approximately eight months of additional disability benefits beyond November 30, 2019, if I meet the medical requirements at that time.

I began working for Cook County around the Summer of 1999. In 2001, I was diagnosed with Multiple Sclerosis. By around late 2016, my neurological condition had worsened to the point where I was not able to work, and my neurologist told me I should not work. Among a variety of other symptoms, I could no longer stand or walk, and I suffered from extreme fatigue. These symptoms have continued to the present.

I applied for disability benefits from the Cook County Pension Fund and was granted those benefits by the Retirement Board around early 2017, based on information and medical documentation provided by my neurologist and an independent medical examination ordered by Cook County. Since then, and most recently on May 2, 2019, the Retirement Board has approved my applications for continuation of disability benefits. Each of these applications included up-to-date information and documentation provided by my neurologist and independent medical examinations by the County. The amount of disability time for which I am eligible is based on my years of service under County rules/ordinance.

All of the records which support and justify the County's granting of my disability benefits are with the Retirement Board. I am happy to make my medical records available to you if you wish.

At this time, I am unable to provide you with medical documentation authorizing my return to work by May 29, 2019, as you requested in your letter. The Retirement Board has informed me that I will lose my disability benefits if you terminate me. Therefore, I respectfully request that you allow me to use the disability benefits which I am granted by the Retirement Board under County rules/ordinance, rather than terminating me as threatened in your May 16, 2019, letter.

Finally, I have temporarily relocated to Nevada to be close to my sister so she can assist me with my daily activities when my wife is unable to do so.

Sincerely,

John R. O'Connell
708-271-3470, jt527@aol.com

A264 A46

C 41

FILED DATE: 1/9/2020 3:08 PM 2020CH00288

EXHIBIT E



BUREAU OF HUMAN RESOURCES

VELISHA L. HADDOX

BUREAU CHIEF

118 North Clark Street, Room 840 • Chicago, Illinois 60602 • (312) 603-3300

TONI PRECKWINKLE

PRESIDENT

**Cook County Board
of Commissioners**

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2nd District

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3rd District

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12th District

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13th District

SCOTT R. BRITTON

14th District

KEVIN B. MORRISON

15th District

JEFFREY R. TOBOLSKI

16th District

SEAN M. MORRISON

17th District

June 13, 2019

John O'Connell

1120 Las Brisas Drive

Minden, NV 89423

Email: Jt527@aol.com

Dear Mr. O'Connell,

The Cook County Bureau of Human Resources is in receipt of your letter dated May 23, 2019 requesting not to be terminated due to your medical condition and the Cook County Pension and Annuity Fund's (Pension Fund) approval of your disability benefits.

Please be advised that any all determinations regarding your disability benefits fall solely within the discretion of the Pension Fund, which is a separate legal entity from the Cook County Offices under the President, your employer.

We are granting you an extension of time, until June 29, 2019, to provide medical documentation indicating your projected return to work date and/or authorizing you to return to work with or without a reasonable accommodation. Failure to provide such documentation will result in administrative separation.

Feel free to contact me at 312-603-6121.

Very truly yours,

Simone McNeil

Deputy Bureau Chief

EXHIBIT F



BUREAU OF HUMAN RESOURCES

VELISHA L. HADDOX

BUREAU CHIEF

118 North Clark Street, Room 840 • Chicago, Illinois 60602 • (312) 603-3300

FILED DATE: 1/9/2020 3:08 PM 2020CH00288

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PRESIDENT

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KEVIN MORRISON

15th District

JEFFREY R. TOBOLSKI

16th District

SEAN M. MORRISON

17th District

July 3, 2019

John O'Connell
1120 Las Brisas Drive
Minden, NV 89423

Dear Mr. O'Connell,

The Bureau of Human Resources has not received medical documentation indicating a projected return to work date. Nor has the Bureau of Human Resources received an authorization returning you to work with or without a reasonable accommodation. You have been separated from your position effective July 1, 2019.

Enclosed is a separation packet for your information and review.

Feel free to contact me at 312-603-6121.

Very truly yours,

Simone McNeil
Deputy Bureau Chief

EXHIBIT G



BUREAU OF HUMAN RESOURCES

VELISHA L. HADDOX

BUREAU CHIEF

118 North Clark Street, Room 840 • Chicago, Illinois 60602 • (312) 603-3300

TONI PRECKWINKLE

PRESIDENT

**Cook County Board
of Commissioners**

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JEFFREY R. TOBOLSKI

16th District

SEAN M. MORRISON

17th District

August 23, 2019

Michael L. Shakman

Miller, Shakman, Levine & Feldman, LLP

180 N. LaSalle Street

Chicago, IL 60601

Re: John O'Connell

Dear Mr. Shakman:

The Cook County Bureau of Human Resources (Bureau) is in receipt of your letter dated August 7, 2019. The Bureau's decision to administratively separate Mr. O'Connell is unrelated to the Cook County Pension and Annuity Fund, a separate legal entity from Cook County Offices Under the President.

For questions pertaining to Mr. O'Connell's benefits or any processes related thereto, you may contact Brent Lewandowski, Senior Benefits Manager, Cook County Pension and Annuity Fund at (312) 603-1218.

Sincerely,

Velisha L. Haddox

Bureau Chief

Bureau of Human Resources

STATUTORY ADDENDUM

40 ILCS 5/9-108(a)

Sec. 9-108. "Employee", "contributor" or "participant".

(a) Any employee of the county employed in any position in the classified civil service of the county, or in any position under the County Police Merit Board as a deputy sheriff in the County Police Department.

Any such employee employed after January 1, 1968 and before January 1, 1984 shall be entitled only to the benefits provided in Sections 9-147 and 9-156, prior to the earlier of completion of 12 consecutive calendar months of service and January 1, 1984, and no contributions shall be made by him during this period. Upon the completion of said period contributions shall begin and the employee shall become entitled to the benefits of this Article.

Any such employee may elect to make contributions for such period and receive credit therefor under rules prescribed by the board.

Any such employee in service on or after January 1, 1984, regardless of when he became an employee, shall be deemed a participant and contributor to the fund created by this Article and the employee shall be entitled to the benefits of this Article.

* * * * *

40 ILCS 5/9-157

Sec. 9-157. Ordinary disability benefit. An employee while under age 65 and prior to January 1, 1979, or while under age 70 and after January 1, 1979, but prior to January 1, 1987, and regardless of age on or after January 1, 1987, who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof.

No employee who becomes disabled and whose disability commences during any period of absence from duty without pay may receive ordinary disability benefit until he recovers from such disability and performs the duties of his position in the service for at least 15 consecutive days, Sundays and holidays excepted, after his recovery from such disability.

The benefit shall not be allowed unless application therefor is made while the disability exists, nor for any period of disability before 30 days before the application for such benefit is made. The foregoing limitations do not apply if the board finds from satisfactory evidence presented to it that there was reasonable cause for delay in filing such application within such periods of time.

The first payment shall be made not later than one month after the benefit is granted and each subsequent payment shall be made not later than one month after the last preceding payment.

The disability benefit prescribed herein shall cease when the first of the following dates shall occur and the employee, if still disabled, shall thereafter be entitled to such annuity as is otherwise provided in this Article:

- (a) the date disability ceases.
- (b) the date the disabled employee attains age 65 for disability commencing prior to January 1, 1979.
- (c) the date the disabled employee attains 65 for disability commencing prior to attainment of age 60 in the service and after January 1, 1979.
- (d) the date the disabled employee attains the age of 70 for disability commencing after attainment of age 60 in the service and after January 1, 1979.
- (e) the date the payments of the benefit shall exceed in the aggregate, throughout the employee's service, a period equal to 1/4 of the total service rendered prior to the date of disability but in no event more than 5 years. In computing such total service any period during which the employee received ordinary disability benefit and any period of absence from duty other than paid vacation shall be excluded.

Any employee whose duty disability benefit was terminated on or after January 1, 1979 by reason of his attainment of age 65 and who continues to be disabled after age 65 may elect before July 1, 1986 to have such benefits resumed beginning at the time of such termination and continuing until termination is required under this Section as amended by this amendatory Act of 1985. The amount payable to any employee for such resumed benefit for any period shall be reduced by the amount of any retirement annuity paid to such employee under this Article for the same period of time or by any refund paid in lieu of annuity.

Any employee whose disability benefit was terminated on or after January 1, 1987 by reason of his attainment of age 70, and who continues to be disabled after age 70, may elect before March 31, 1988, to have such benefits resumed beginning at the time of such termination and continuing until termination is required under this Section as amended by this amendatory Act of 1987. The amount payable to any employee for such resumed benefit for any period shall be reduced by the amount of any retirement annuity paid to such employee under this Article for the same period of time or by any refund paid in lieu of annuity.

Ordinary disability benefit shall be 50% of the employee's salary at the date of disability. Instead of all amounts ordinarily contributed by an employee and by the county for age and service annuity and widow's annuity based on the salary at date of disability, the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is

deemed for annuity and refund purposes as amounts contributed by him. The county shall also contribute 1/2 of 1% salary deductions required as a contribution from the employee under Section 9-133.

An employee who has withdrawn from service or was laid off for any reason, who is absent from service thereafter for 60 days or more who re-enters the service subsequent to such absence is not entitled to ordinary disability benefit unless he renders at least 6 months of service subsequent to the date of such last re-entry.

* * * * *

40 ILCS 5/9-159

Sec. 9-159. When disability benefit not payable.

(a) If an employee receiving duty disability or ordinary disability benefit refuses to submit to examination by a physician appointed by the board, he shall have no further right to receive the benefit.

(b) Disability benefit shall not be paid for any time for which the employee receives any part of his salary, or while employed by any public body supported in whole or in part by taxation.

(c) If an employee who shall be disabled, or his widow or children receive any compensation or payment from the county for specific loss, disability or death under the Workers' Compensation Act or Workers' Occupational Diseases Act, the disability benefit or any annuity for him or his widow or children payable as the result of such specific loss, disability or death shall be reduced by any amount so received or recoverable. If the amount received as such compensation or payment exceeds such disability benefit or other annuity payable as the result of such specific loss, disability or death, no payment of disability benefit or other annuity shall be made until the accumulative amounts thereof equals the amount of such compensation or payment. In such calculation no interest shall be considered. In adjusting the amount of any annuity in relation to compensation received or recoverable during any period of time, the annuity to the widow shall be first reduced.

If any employee, or widow shall be denied compensation by such county under the aforesaid Acts, or if such county shall fail to act, such denial or failure to act shall not be considered final until the claim has been adjudicated by the Illinois Workers' Compensation Commission.

(d) Before any action may be taken by the board on an application for duty disability benefit or widow's compensation or supplemental benefit, other than rejection of any such application that is otherwise incomplete or untimely, the related applicant must file a timely claim under the Workers' Compensation Act or the Workers' Occupational Diseases Act, as applicable, to establish that the disability or death resulted from an injury incurred in the performance of an act

or acts of duty, and the applicant must receive compensation or payment from the claim or the claim must otherwise be finally adjudicated.

* * * * *

40 ILCS 5/9-160

Sec. 9-160. Annuity after withdrawal while disabled. An employee whose disability continues after he has received ordinary disability benefit for the maximum period of time prescribed by this Article, and who withdraws before age 60 while still so disabled, is entitled to receive the annuity provided from the total sum accumulated to his credit from employee contributions and county contributions to be computed as of his age on the date of withdrawal.

The annuity to which his wife shall be entitled upon his death, shall be fixed on the date of his withdrawal. It shall be provided on a reversionary annuity basis from the total sum accumulated to his credit for widow's annuity on the date of such withdrawal.

Upon the death of any such employee while on annuity, if his service was at least 4 years after the date of his original entry, and at least 2 years after the date of his latest re-entry, his unmarried child or children under age 18 shall be entitled to annuity specified in this Article for children of an employee who retires after age 50 (age 55 for withdrawal before January 1, 1988), subject to prescribed limitations on total payments to a family of an employee.

* * * * *

40 ILCS 5/9-174

Sec. 9-174. Contributions by disabled employee whose ordinary disability benefit has expired.

In the case of any disabled employee whose credit for ordinary disability benefit purposes has expired and who continues to be disabled such employee shall have the right to contribute to the fund at the current contribution rate for a period not to exceed a total of 12 months during his entire period of service and to receive credit for all annuity purposes for any such periods paid for. Such payment shall not affect the employee's resignation date for purposes of annuity.

* * * * *

40 ILCS 5/9-181

Sec. 9-181. Contributions by county for ordinary disability benefit.

The county shall contribute all amounts ordinarily contributed by it for annuity purposes for any employee receiving ordinary disability benefit as though he were in active discharge of his duties during such period of disability.

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PENSIONS (40 ILCS 5/) Illinois Pension Code.

(40 ILCS 5/Art. 9 heading)

ARTICLE 9. COUNTY EMPLOYEES' AND OFFICERS'
ANNUITY AND BENEFIT FUND - COUNTIES OVER
3,000,000 INHABITANTS

(Source: P.A. 95-331, eff. 8-21-07.)

(40 ILCS 5/9-101) (from Ch. 108 1/2, par. 9-101)

Sec. 9-101. Creation of fund. In each county of more than 3,000,000 inhabitants a County Employees' and Officers' Annuity and Benefit Fund shall be created, set apart, maintained and administered, in the manner prescribed in this Article, for the benefit of the employees and officers herein designated and their beneficiaries.

(Source: P.A. 90-32, eff. 6-27-97.)

(40 ILCS 5/9-102) (from Ch. 108 1/2, par. 9-102)

Sec. 9-102. Terms defined. The terms used in this Article have the meanings ascribed to them in the Sections following this Section and preceding Section 9-120, except when the context otherwise requires.

(Source: P.A. 98-756, eff. 7-16-14.)

(40 ILCS 5/9-103) (from Ch. 108 1/2, par. 9-103)

Sec. 9-103. Fund.

"Fund": The County Employees' and Officers' Annuity and Benefit Fund herein created.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-104) (from Ch. 108 1/2, par. 9-104)

Sec. 9-104. The 1925 Act.

"The 1925 Act": "An Act to provide for the creation, setting apart, maintenance and administration of a county employees' and officers' annuity and benefit fund in counties having a population exceeding five hundred thousand inhabitants", approved July 2, 1925, as amended.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-105) (from Ch. 108 1/2, par. 9-105)

Sec. 9-105. County pension fund.

"County pension fund": Any pension fund created by "An Act

to provide for the formation and disbursement of a pension fund in counties having a population of 150,000 or more inhabitants, for the benefit of officers and employees in the service of such counties", approved June 29, 1915, as amended.
(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-106) (from Ch. 108 1/2, par. 9-106)
Sec. 9-106. Effective date.

"Effective date": January 1, 1926, for any county covered by "The 1925 Act" on the date this Article comes in effect; and January 1 of the first year after the year in which any county hereafter comes under the provisions of this Article.
(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-107) (from Ch. 108 1/2, par. 9-107)
Sec. 9-107. Retirement board or board.

"Retirement board" or "board": The Board of Trustees of the County Employees' and Officers' Annuity and Benefit Fund created by this Article.
(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-108) (from Ch. 108 1/2, par. 9-108)
Sec. 9-108. "Employee", "contributor" or "participant".

(a) Any employee of the county employed in any position in the classified civil service of the county, or in any position under the County Police Merit Board as a deputy sheriff in the County Police Department.

Any such employee employed after January 1, 1968 and before January 1, 1984 shall be entitled only to the benefits provided in Sections 9-147 and 9-156, prior to the earlier of completion of 12 consecutive calendar months of service and January 1, 1984, and no contributions shall be made by him during this period. Upon the completion of said period contributions shall begin and the employee shall become entitled to the benefits of this Article.

Any such employee may elect to make contributions for such period and receive credit therefor under rules prescribed by the board.

Any such employee in service on or after January 1, 1984, regardless of when he became an employee, shall be deemed a participant and contributor to the fund created by this Article and the employee shall be entitled to the benefits of this Article.

(b) Any employee of the county employed in any position not included in the classified civil service of the county whose salary or wage is paid in whole or in part by the county. Any such employee employed after July 1, 1957, and before January 1,

1984, shall be entitled only to the benefits provided in Sections 9-147 and 9-156, prior to the earlier of completion of 12 consecutive calendar months of service and January 1, 1984, and no contributions shall be made by him during this period. Upon the completion of said period contributions shall begin and the employee shall become entitled to the benefits of this Article.

Any such employee may elect to make contributions for such period and receive credit therefor under rules prescribed by the board.

Any such employee in service on or after January 1, 1984, regardless of when he became an employee, shall be deemed a participant and contributor to the fund created by this Article and the employee shall be entitled to the benefits of this Article.

(c) Any county officer elected by vote of the people, including a member of the county board, when such officer elects to become a contributor.

(d) Any person employed by the board.

(e) Employees of a County Department of Public Aid in counties of 3,000,000 or more population who are transferred to State employment by operation of law enacted by the 76th General Assembly and who elect not to become members of the Retirement System established under Article 14 of this Code as of the date they become State employees shall retain their membership in the fund established in this Article 9 until the first day of the calendar month next following the date on which they become State employees, at which time they shall become members of the System established under Article 14.

(f) If, by operation of law, a function of a "Governmental Unit", as such term is defined in the "Retirement Systems Reciprocal Act" in Article 20 of the Illinois Pension Code, is transferred in whole or in part to the county in which this Article is in force and effect, and employees are transferred as a group or class to such county service, such transferred employee shall, if on the day immediately prior to the date of such transfer he was a contributor and participant in the annuity and benefit fund or retirement system in operation in such other "Governmental Unit" for employees of such Unit, immediately upon such transfer be deemed a participant and contributor to the fund created by this Article.

(Source: P.A. 90-655, eff. 7-30-98.)

(40 ILCS 5/9-108.1) (from Ch. 108 1/2, par. 9-108.1)

Sec. 9-108.1. Employees of County Department of Public Aid transferred to State employment by operation of law.

Employees of a County Department of Public Aid in a county

of 3,000,000 or more population who, on January 1, 1974, are transferred by operation of law to State employment and who elect not to become members of the Retirement System established under Article 14 of this Code as of the date they become State employees shall retain their membership in the fund established in this Article 9 until February 1, 1974, at which time they shall become members of the System established under Article 14. (Source: P.A. 78-365.)

(40 ILCS 5/9-108.2) (from Ch. 108 1/2, par. 9-108.2)
Sec. 9-108.2. Gender.

The masculine gender whenever used in this Article includes the feminine gender and all annuities and other benefits applicable to male employees and their survivors, and the contributions to be made for widows' annuities or other annuities, benefits, and refunds, shall apply with equal force to female employees and their survivors, without any modification or distinction whatsoever. (Source: P.A. 78-1129.)

(40 ILCS 5/9-108.3)

Sec. 9-108.3. In service. "In service": Any period during which contributions are being made to the Fund on behalf of an employee. (Source: P.A. 99-578, eff. 7-15-16.)

(40 ILCS 5/9-109) (from Ch. 108 1/2, par. 9-109)
Sec. 9-109. "Present employee".

(a) Any employee on the day before the effective date who becomes a contributor on the effective date; and

(b) Any person who was an employee of the county or the Board of Trustees of the County Pension Fund on the day before the effective date who did not become a contributor on the effective date and who is in the employ of the county or the board on August 31, 1935 and who has made application on or before September 1, 1935 to the board to have the provisions of "The 1925 Act" apply to his former periods of service, and who

(1) was not a contributor to the fund prior to September 1, 1935, or

(2) became a contributor prior to September 1, 1935, and was employed by the county or board prior to the time he became a contributor;

(c) Any person who (1) was an employee of the county or the Board of Trustees of the pension fund which the fund herein provided for supersedes, prior to the effective date but who was not in such employ on such date, and (2) returns to the service of the county or of the board subsequently and is an employee

for 10 or more years, at least 6 of which were employment subsequent to such date; and

(d) Any person elected by vote of the people to a county office prior to July 1, 1947, who on said date is serving in such elective office and who elects to become a contributor.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-110) (from Ch. 108 1/2, par. 9-110)

Sec. 9-110. "Future entrant".

(a) Any person not described in subdivisions (b), (c), (d), or (e) of this definition of "Future Entrant" who becomes an employee on or after the effective date, except a county officer elected prior to July 1, 1947; and any person elected by vote of the people to a county office after July 1, 1947, who elects to become a contributor;

(b) Any person who (1) was an employee on August 31, 1935, (2) was not a contributor prior to September 1, 1935, and (3) did not make application on or before September 1, 1935, to be covered by "The 1925 Act" for his periods of service prior to September 1, 1935;

(c) Any person becoming an employee for the first time on or after the effective date, who (1) was an employee on August 31, 1935, (2) became a contributor prior to September 1, 1935, (3) rendered service to the county or board before he became a contributor, and (4) did not make application to the board on or before September 1, 1935, to be covered by "The 1925 Act" for his former periods of service;

(d) Any person becoming an employee for the first time on or after the effective date who (1) was an employee on August 31, 1935, (2) became a contributor prior to September 1, 1935, (3) was employed by the county prior to becoming a contributor, and (4) made application on or before September 1, 1935, to the board to be covered by "The 1925 Act" for such former periods of service;

(e) Any person becoming an employee for the first time on or after the effective date who (1) was in the employ of the county or the board on August 31, 1935, (2) did not become a contributor prior to September 1, 1935 and (3) made application on or before September 1, 1935, to be covered by "The 1925 Act" for his former periods of service.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-111) (from Ch. 108 1/2, par. 9-111)

Sec. 9-111. Re-entrant.

"Re-entrant": Any employee who withdraws from service and receives a refund, and thereafter re-enters service prior to age

65.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-112) (from Ch. 108 1/2, par. 9-112)

Sec. 9-112. Salary. "Salary": Annual salary of an employee under this Article as follows:

(a) Beginning on the effective date and prior to July 1, 1947 \$3000 shall be the maximum amount of annual salary of any employee to be considered for the purposes of this Article; and beginning on July 1, 1947 and prior to July 1, 1953, said maximum amount shall be \$4800; and beginning on July 1, 1953 and prior to July 1, 1957 said maximum amount shall be \$6,000; and beginning on July 1, 1957, salary shall be based upon the actual sum paid and reported to the Fund, exclusive of overtime and extra service.

(b) (Blank).

(c) Where the county provides lodging, board and laundry service for an employee without charge and so reports to the Fund while the employee is receiving such lodging, board and laundry service, his salary shall be considered to be \$480 a year more for the period from the effective date to August 1, 1959 and thereafter \$960 more than the amount payable as salary for the year, and the salary of an employee for whom one or more daily meals are provided by the county without charge therefor and are reported by the county to the Fund while the employee is receiving such meals shall be considered to be \$120 a year more for each such daily meal for the period from the effective date to August 1, 1959 and thereafter \$240 more for each such daily meal than the amount payable as his salary for the year.

(d) For the purposes of ordinary disability, salary shall be based upon the rate reported to the Fund at the date of disability and adjusted to reflect the actual hours paid during the prior year.

(Source: P.A. 98-551, eff. 8-27-13.)

(40 ILCS 5/9-113) (from Ch. 108 1/2, par. 9-113)

Sec. 9-113. Disability.

"Disability": A physical or mental incapacity as the result of which an employee is unable to perform the duties of his position.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-114) (from Ch. 108 1/2, par. 9-114)

Sec. 9-114. Injury.

"Injury": A physical hurt resulting from external force or violence.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-115) (from Ch. 108 1/2, par. 9-115)

Sec. 9-115. Child or children. "Child" or "children": The natural child or children or any child or children legally adopted by an employee.

(Source: P.A. 95-279, eff. 1-1-08.)

(40 ILCS 5/9-116) (from Ch. 108 1/2, par. 9-116)

Sec. 9-116. Withdraws from service, withdrawal from service or withdrawal.

"Withdraws from service", "withdrawal from service" or "withdrawal": Discharge or resignation of an employee.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-117) (from Ch. 108 1/2, par. 9-117)

Sec. 9-117. Assets.

"Assets": The total value of cash, securities and other property held. Bonds shall be valued at their amortized book values.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-118) (from Ch. 108 1/2, par. 9-118)

Sec. 9-118. Effective rate of interest, interest at the effective rate, or interest.

"Effective rate of interest", "interest at the effective rate", or "interest": Interest at 4% per annum for a present employee, or for a future entrant or re-entrant who was a participant or contributor on January 1, 1954; and at 3% per annum for a future entrant or re-entrant who becomes a contributor after January 1, 1954. In all cases involving reserves, credits, transfers, and charges, "effective rate of interest", "interest at the effective rate" or "interest" shall be applied at these rates.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-119) (from Ch. 108 1/2, par. 9-119)

Sec. 9-119. Annuity.

"Annuity": Equal monthly payments for life, unless otherwise specified. The first payment shall be due and payable 1 month after the occurrence of the event upon which payment of the annuity depends, and the last payment shall be payable as of the date of the annuitant's death and be prorated from the date of the last preceding payment to the date of death; provided, that as to annuities effective July 1, 1973, and thereafter payments shall be made as of the first day of each calendar month during the annuity payment period, the first payment to be made as of the first day of the calendar month coincidental with or next

following the first day of the annuity payment period and the last payment to be made as of the first day of the calendar month in which the annuitant dies or the annuity payment period ends.

(Source: P.A. 78-656.)

(40 ILCS 5/9-119.1)

Sec. 9-119.1. Earned annuity. "Earned annuity": (1) The annuity a participant has accrued as provided in Section 9-134, disregarding minimum age and service eligibility requirements and without any reduction due to age, or (2) the age and service annuity as provided in Sections 9-125 through 9-128, inclusive.

(Source: P.A. 98-551, eff. 8-27-13.)

(40 ILCS 5/9-120) (from Ch. 108 1/2, par. 9-120)

Sec. 9-120. Persons to whom article does not apply. This Article does not apply to:

(a) Any person whose position will not ordinarily permit service during one month in a calendar year, nor to any person who is age 65 or over when he enters service unless such a person elects to have this Article apply by filing written notice of such intent with the retirement board within 4 months after the date of entering service. Any person to whom this Article did not apply because of the age 65 limitation may file such written notice within 4 months of the effective date of this Amendatory Act. Such a person may establish credit for any periods for which this Article did not apply by making the employee contributions which would have been required had this Article applied to such person together with interest.

(b) Any person who becomes an employee after June 30, 1979 as a public service employment program participant under the Federal Comprehensive Employment and Training Act and whose wages or fringe benefits are paid in whole or in part by funds provided under such Act.

(Source: P.A. 87-794.)

(40 ILCS 5/9-120.1)

Sec. 9-120.1. CTA - continued participation; military service credit.

(a) A person who (i) has at least 20 years of creditable service in the Fund, (ii) has not begun receiving a retirement annuity under this Article, and (iii) is employed in a position under which he or she is eligible to actively participate in the retirement system established under Section 22-101 of this Code may elect, after he or she ceases to be a participant but in no event after June 1, 1998, to continue his or her participation in this Fund while employed by the Chicago Transit Authority,

for up to 10 additional years, by making written application to the Board.

(b) A person who elects to continue participation under this Section shall make contributions directly to the Fund, not less frequently than monthly, based on the person's actual Chicago Transit Authority compensation and the rates applicable to employees under this Fund. Creditable service shall be granted to any person for the period, not exceeding 10 years, during which the person continues participation in this Fund under this Section and continues to make contributions as required. For periods of service established under this Section, the person's actual Chicago Transit Authority compensation shall be considered his or her salary for purposes of calculating benefits under this Article.

(c) A person who elects to continue participation under this Section may cancel that election at any time.

(d) A person who elects to continue participation under this Section may establish service credit in this Fund for periods of employment by the Chicago Transit Authority prior to that election, by applying in writing and paying to the Fund an amount representing employee contributions for the service being established, based on the person's actual Chicago Transit Authority compensation and the rates then applicable to employees under this Fund, without interest.

(e) A person who qualifies under this Section may elect to purchase credit for up to 4 years of military service, whether or not that service followed service as a county employee. The military service need not have been served in wartime, but the employee must not have been dishonorably discharged. To establish this creditable service the applicant must pay to the Fund, on or before July 1, 1998, an amount determined by the Fund to represent the employee contributions for the creditable service, based on the employee's rate of compensation on his or her last day of service as a contributor before the military service or his or her salary on the first day of service following the military service, whichever is greater, plus interest at the effective rate from the date of discharge to the date of payment. For the purposes of this subsection, "military service" includes service in the United States armed forces reserves.

(f) Notwithstanding any other provision of this Section, a person may not establish creditable service under this Section for any period for which the person receives credit under any other public employee retirement system, including the retirement system established under Section 22-101 of this Code, unless the credit under that retirement system has been irrevocably relinquished.

(Source: P.A. 90-32, eff. 6-27-97.)

(40 ILCS 5/9-121) (from Ch. 108 1/2, par. 9-121)

Sec. 9-121. Election of county officer to become contributor. (a) Any employee elected by a vote of the people to a county office may elect to become a contributor by exercising such election while in office.

(b) Upon election by a future entrant, credit shall accrue for all service and credit shall be granted for all contributions made by and on his behalf by the county for age and service and widow's annuity. The employee may make contributions with interest at the effective rate, equal to the sum which would have accumulated to his credit for age and service and widow's annuity as of the date he becomes a contributor had he made contributions from the date of his assuming elective office to the date he becomes a contributor. Concurrent credit shall be granted for county contributions at the rate in effect during the periods for which the employee made contributions.

Any future entrant who renders at least 2 years of service after such election shall receive credit for all purposes of this Article, including prior service, provided that if he has received a refund of contributions with respect to any such service, credit shall not be granted unless repayment is made of all such refunds, including interest to the date of repayment.

(c) Upon election by a present employee, credit shall be granted and county contributions shall be made for all purposes of this Article for all periods prior to October 1, 1947, during which he was an officer or employee of the county, except as otherwise prescribed in this Section. Such county contributions shall be at the rates in effect for employees under the provisions of "The 1925 Act" during periods for which credit is allowed for the purposes specified in this paragraph together with interest, and shall be considered together with all other contributions in the computation of annuities to which the employee or his widow may be entitled.

Any such present employee may elect to make additional contributions with interest at 4% per annum, equal to the sum which would have accumulated for age and service annuity and widow's annuity as of the date he became a contributor had he made contributions throughout his entire period of service for which county contributions are provided in this Section. Such additional contributions shall be improved at interest for the same period of time as regular contributions in the case of any other present employee, and shall, together with all other amounts contributed by the employee, be considered as contributions for age and service annuity, widow's annuity and refund purposes.

(d) Any present employee who received a refund under "The

1925 Act" prior to July 1, 1947, shall receive no credit for service covered by such refund unless repayment is made by him of all such refunds, including interest to the date of repayment.

(e) The time and manner of making additional contributions and repayment of refunds shall be prescribed by the board.

(Source: P.A. 81-1536.)

(40 ILCS 5/9-121.1) (from Ch. 108 1/2, par. 9-121.1)

Sec. 9-121.1. General Assembly transfer.

(a) Any active (and until February 1, 1993, any former) member of the General Assembly Retirement System may apply for transfer of his credits and creditable service accumulated under this Fund to the General Assembly System. Such credits and creditable service shall be transferred forthwith. Payment by this Fund to the General Assembly Retirement System shall be made at the same time and shall consist of:

(1) the amounts accumulated to the credit of the applicant, including interest, on the books of the Fund on the date of transfer, but excluding any additional or optional credits, which credits shall be refunded to the applicant; and

(2) municipality credits computed and credited under this Article including interest, on the books of the Fund on the date the member terminated service under the Fund. Participation in this Fund as to any credits transferred under this Section shall terminate on the date of transfer.

(b) An active (and until February 1, 1993, a former) member of the General Assembly Retirement System who has service credits and creditable service under the Fund may establish additional service credits and creditable service for periods during which he was an elected official and could have elected to participate but did not so elect. Service credits and creditable service may be established by payment to the fund of an amount equal to the contributions he would have made if he had elected to participate, plus interest to the date of payment.

(c) An active (and until February 1, 1993, a former) member of the General Assembly Retirement System may reinstate service and service credits terminated upon receipt of a separation benefit, by payment to the Fund of the amount of the separation benefit plus interest thereon to the date of payment.

(d) An active (and until February 1, 1993, a former) member of the General Assembly having no service credits or creditable service in the Fund may establish service credit and creditable service for periods during which he was employed by the county but did not participate in the Fund, by paying to the Fund prior

to July 1, 1991 an amount equal to the contributions he would have made if he had participated, plus interest thereon at 6% per annum compounded annually from such period to the date of payment.

(e) Any active member of the General Assembly may apply for transfer of his credits and creditable service established under subsection (c) or (d) to any annuity and benefit fund established under Article 5, 8 or 12 of this Act. Such credits and creditable service shall be transferred forthwith, together with a payment from this Fund to the designated Article 5, 8 or 12 fund consisting of the amounts accumulated to the credit of the applicant under subsection (c) or (d), including the corresponding employer contributions and interest, on the books of the Fund on the date of transfer. Participation in this Fund as to any credits transferred under this subsection shall terminate on the date of transfer.

(Source: P.A. 86-27; 86-273; 86-1028; 86-1488; 87-794.)

(40 ILCS 5/9-121.2) (from Ch. 108 1/2, par. 9-121.2)

Sec. 9-121.2. Validation of service credits. An active member of the General Assembly having no service credits or creditable service in the Fund, may establish service credit and creditable service for periods during which he was an employee of an employer in an elective office and could have elected to participate in the Fund but did not so elect. Service credits and creditable service may be established by payment to the Fund of an amount equal to the contributions he would have made if he had elected to participate plus interest to the date of payment, together with a like amount as the applicable municipality credits including interest, but the total period of such creditable service that may be validated shall not exceed 8 years.

(Source: P.A. 81-1536.)

(40 ILCS 5/9-121.3) (from Ch. 108 1/2, par. 9-121.3)

Sec. 9-121.3. (a) Persons otherwise required or eligible to participate in the Fund who elect to continue participation in the General Assembly System under Section 2-117.1 may not participate in the Fund for the duration of such continued participation under Section 2-117.1.

(b) Upon terminating such continued participation, a person may transfer credits and creditable service accumulated under Section 2-117.1 to this Fund, upon payment to the Fund of (1) the amount by which the employer and employee contributions that would have been required if he had participated in this Fund during the period for which credit under Section 2-117.1 is being transferred, plus interest, exceeds the amounts actually transferred under that Section to the Fund, plus (2) interest

thereon at 6% per annum compounded annually from the date of such participation to the date of payment.
(Source: P.A. 82-342.)

(40 ILCS 5/9-121.4) (from Ch. 108 1/2, par. 9-121.4)

Sec. 9-121.4. Service as Village Trustee. Any participant who served as a Village Trustee, and was not then eligible to participate in the Illinois Municipal Retirement Fund for such service, may elect to receive credit under this Article for such service by paying to the Fund: (1) an amount equal to his annual salary at the time of election, times the employee contribution rate in effect at the time of election, times the number of years of service credit to be granted under this Section; plus (2) an amount equal to his annual salary at the time of election, times the employer contribution rate in effect at the time of election, times the number of years of service credit to be granted under this Section. The service credit received under this Section may not exceed 50% of the participant's service credit in the Fund at the time of election. No person may receive more than 4 years of service credit under this Section.
(Source: P.A. 82-785.)

(40 ILCS 5/9-121.5) (from Ch. 108 1/2, par. 9-121.5)

Sec. 9-121.5. Elected county officer transfer of credits. Any county officer elected by vote of the people who has elected to participate in the Fund may transfer to this Fund credits and creditable service accumulated under any other pension fund or retirement system established under Articles 2 through 18 of this Code, upon payment to the Fund of (1) the amount by which the employer and employee contributions that would have been required if he had participated in this Fund during the period for which credit is being transferred, plus interest, exceeds the amounts actually transferred from such other fund or system to this Fund, plus (2) interest thereon at 6% per year compounded annually from the date of transfer to the date of payment.
(Source: P.A. 85-964.)

(40 ILCS 5/9-121.6) (from Ch. 108 1/2, par. 9-121.6)

Sec. 9-121.6. Alternative annuity for county officers.

(a) Any county officer elected by vote of the people may elect to establish alternative credits for an alternative annuity by electing in writing to make additional optional contributions in accordance with this Section and procedures established by the board. Such elected county officer may discontinue making the additional optional contributions by notifying the Fund in writing in accordance with this Section

and procedures established by the board.

Additional optional contributions for the alternative annuity shall be as follows:

(1) For service after the option is elected, an additional contribution of 3% of salary shall be contributed to the Fund on the same basis and under the same conditions as contributions required under Sections 9-170 and 9-176.

(2) For service before the option is elected, an additional contribution of 3% of the salary for the applicable period of service, plus interest at the effective rate from the date of service to the date of payment. All payments for past service must be paid in full before credit is given. No additional optional contributions may be made for any period of service for which credit has been previously forfeited by acceptance of a refund, unless the refund is repaid in full with interest at the effective rate from the date of refund to the date of repayment.

(b) In lieu of the retirement annuity otherwise payable under this Article, any county officer elected by vote of the people who (1) has elected to participate in the Fund and make additional optional contributions in accordance with this Section, and (2) has attained age 60 with at least 10 years of service credit, or has attained age 65 with at least 8 years of service credit, may elect to have his retirement annuity computed as follows: 3% of the participant's salary at the time of termination of service for each of the first 8 years of service credit, plus 4% of such salary for each of the next 4 years of service credit, plus 5% of such salary for each year of service credit in excess of 12 years, subject to a maximum of 80% of such salary. To the extent such elected county officer has made additional optional contributions with respect to only a portion of his years of service credit, his retirement annuity will first be determined in accordance with this Section to the extent such additional optional contributions were made, and then in accordance with the remaining Sections of this Article to the extent of years of service credit with respect to which additional optional contributions were not made.

(c) In lieu of the disability benefits otherwise payable under this Article, any county officer elected by vote of the people who (1) has elected to participate in the Fund, and (2) has become permanently disabled and as a consequence is unable to perform the duties of his office, and (3) was making optional contributions in accordance with this Section at the time the disability was incurred, may elect to receive a disability annuity calculated in accordance with the formula in subsection (b). For the purposes of this subsection, such elected county

officer shall be considered permanently disabled only if: (i) disability occurs while in service as an elected county officer and is of such a nature as to prevent him from reasonably performing the duties of his office at the time; and (ii) the board has received a written certification by at least 2 licensed physicians appointed by it stating that such officer is disabled and that the disability is likely to be permanent.

(d) Refunds of additional optional contributions shall be made on the same basis and under the same conditions as provided under Sections 9-164, 9-166, and 9-167. Interest shall be credited at the effective rate on the same basis and under the same conditions as for other contributions. Optional contributions under this Section shall be included in the amount of employee contributions used to compute the tax levy under Section 9-169.

(e) The effective date of this plan of optional alternative benefits and contributions shall be January 1, 1988, or the date upon which approval is received from the U.S. Internal Revenue Service, whichever is later. The plan of optional alternative benefits and contributions shall not be available to any former county officer or employee receiving an annuity from the Fund on the effective date of the plan, unless he re-enters service as an elected county officer and renders at least 3 years of additional service after the date of re-entry.

(f) Any elected county officer who was entitled to receive a stipend from the State on or after July 1, 2009 and on or before June 30, 2010 may establish earnings credit for the amount of stipend not received, if the elected county official applies in writing to the fund within 6 months after July 2, 2010 (the effective date of Public Act 96-961) and pays to the fund an amount equal to (i) employee contributions on the amount of stipend not received, (ii) employer contributions determined by the Board equal to the employer's normal cost of the benefit on the amount of stipend not received, plus (iii) interest on items (i) and (ii) at the actuarially assumed rate.

(g) The plan of optional alternative benefits and contributions authorized under this Section applies only to county officers elected by vote of the people on or before January 1, 2008 (the effective date of Public Act 95-654). (Source: P.A. 100-201, eff. 8-18-17.)

(40 ILCS 5/9-121.7) (from Ch. 108 1/2, par. 9-121.7)

Sec. 9-121.7. Alternative survivor's benefits for survivors of county officers. In lieu of the survivor's benefits otherwise payable under this Article, the spouse or eligible child of any deceased county officer elected by vote of the people who (1) had elected to participate in the Fund, and (2) was either making additional optional contributions in accordance with

Section 9-121.6 on the date of death, or was receiving an annuity calculated under that Section at the time of death, may elect to receive an annuity beginning on the date of the elected county officer's death, provided that the spouse and officer must have been married on the date of the last termination of his or her service as an elected county officer and for a continuous period of at least one year immediately preceding his or her death.

The annuity shall be payable beginning on the date of the elected county officer's death if the spouse is then age 50 or over, or beginning at age 50 if the age of the spouse is less than 50 years. If a minor unmarried child or children of the county officer, under age 18, also survive, and the child or children are under the care of the eligible spouse, the annuity shall begin as of the date of death of the elected county officer without regard to the spouse's age.

The annuity to a spouse shall be $66 \frac{2}{3}\%$ of the amount of retirement annuity earned by the elected county officer on the date of death, subject to a minimum payment of 10% of salary, provided that if an eligible spouse, regardless of age, has in his or her care at the date of death of the elected county officer any unmarried child or children of the county officer, under age 18, the minimum annuity shall be 30% of the elected officer's salary, plus 10% of salary on account of each minor child of the elected county officer, subject to a combined total payment on account of a spouse and minor children not to exceed 50% of the deceased officer's salary. In the event there shall be no spouse of the elected county officer surviving, or should a spouse remarry or die while eligible minor children still survive the elected county officer, each such child shall be entitled to an annuity equal to 20% of salary of the elected officer subject to a combined total payment on account of all such children not to exceed 50% of salary of the elected county officer. The salary to be used in the calculation of these benefits shall be the same as that prescribed for determining a retirement annuity as provided in Section 9-121.6.

Upon the death of an elected county officer occurring after termination of service or while in receipt of a retirement annuity, the combined total payment to a spouse and minor children, or to minor children alone if no eligible spouse survives, shall be limited to 75% of the amount of retirement annuity earned by the county officer.

Marriage of a child or attainment of age 18, whichever first occurs, shall render the child ineligible for further consideration in the payment of an annuity to a spouse or in the increase in the amount thereof. Upon attainment of ineligibility of the youngest minor child of the elected county officer, the annuity shall immediately revert to the amount payable upon

death of an elected county officer leaving no minor children surviving him or her. If the spouse is under age 50 at such time, the annuity as revised shall be deferred until such age is attained. Remarriage of a widow or widower prior to attainment of age 55 shall disqualify the spouse from the receipt of an annuity.

(Source: P.A. 95-279, eff. 1-1-08.)

(40 ILCS 5/9-121.8) (from Ch. 108 1/2, par. 9-121.8)

Sec. 9-121.8. Transfer of creditable service to Article 8 or 13 Fund.

(a) Any city officer as defined in Section 8-243.2 of this Code, and any sanitary district commissioner elected by vote of the people who is a participant in the pension fund established under Article 13 of this Code, may apply for transfer of his credits and creditable service accumulated under this Fund to such Article 8 or 13 fund. Such creditable service shall be transferred forthwith. Payment by this Fund to the Article 8 or 13 fund shall be made at the same time and shall consist of:

(1) the amounts accumulated to the credit of the applicant, including interest, on the books of the Fund on the date of transfer, but excluding any additional or optional credits, which credits shall be refunded to the applicant; and

(2) employer contributions computed by the Board and credited to the applicant under this Article, including interest, on the books of the Fund on the date the applicant terminated service under the Fund.

Participation in this Fund as to any credits transferred under this Section shall terminate on the date of transfer.

(b) Any such elected city officer or sanitary district commissioner who has credits and creditable service under the Fund may establish additional credits and creditable service for periods during which he could have elected to participate but did not so elect. Credits and creditable service may be established by payment to the Fund of an amount equal to the contributions he would have made if he had elected to participate, plus interest to the date of payment.

(c) Any such elected city officer or sanitary district commissioner may reinstate credits and creditable service terminated upon receipt of a separation benefit, by payment to the Fund of the amount of the separation benefit plus interest thereon to the date of payment.

(Source: P.A. 85-964; 86-1488.)

(40 ILCS 5/9-121.9) (from Ch. 108 1/2, par. 9-121.9)

Sec. 9-121.9. Age Discrimination. Notwithstanding any other

provisions in this Article, it is the intention of the General Assembly to comply with the federal Age Discrimination in Employment Act of 1967, as amended by the Age Discrimination in Employment Amendments of 1986 and the Omnibus Budget Reconciliation Act of 1986, as required with respect to benefits for older individuals. For this purpose, if required, the following changes shall govern with respect to other Sections of this Article, effective January 1, 1988 unless otherwise specified:

(1) Contributions. Beginning January 1, 1988, the spouse contribution shall not cease at age 65, but shall continue during the term of service. Beginning January 1, 1988, concurrent county contributions shall be made during the term of service.

(2) Money purchase accounts "fixed" at age 65. Beginning January 1, 1988, for all purposes, accruals after age 65 for the accounts of those employees who have not withdrawn or retired shall be "unfixed" with interest from the date fixed to January 1, 1988, without any contribution from the time originally fixed until the effective date of this amendatory Act of 1989. Thereafter, all money purchase accounts shall not be "fixed", but shall continue to accrue until time of withdrawal. No contributions are permitted from the time "fixed" until the time "unfixed".

(3) Employee money purchase annuity after age 65. Beginning January 1, 1988, all money purchase annuities shall be computed without limitation for age at time of withdrawal and without being "fixed" at any limiting age.

(4) Widows and wives not entitled to annuity. Beginning January 1, 1988, there shall be no requirement that marriage take place before the employee attained age 65. Any "no spouse" refund must be repaid with interest at the effective rate before a spouse annuity is payable.

(5) Children. Beginning January 1, 1988, there shall be no age requirement on the employee age for a child's annuity.

(6) Compensation and supplemental annuities. The age condition shall remain at 65.

(7) Accounting. Beginning January 1, 1988, or as soon as practical, the Annuity Payment Fund Accounts and the Prior Service Fund Accounts "fixed" shall be "unfixed" and the appropriate amounts returned to the Salary Deduction Fund Account and the corresponding County Contribution Fund Account.

(8) Refunds. Beginning immediately, there shall be no in-service distribution of a "no spouse" refund. Such distribution, if any, shall be made as otherwise provided. Likewise, there shall be no other refund of deductions after fixed or excess cost. Any "no spouse" refund must be repaid with interest at the effective rate before a spouse annuity is payable.

(9) Re-entry into service. Beginning January 1, 1988, for any re-entry into service after age 65, the employee's money purchase annuity and the widow's money purchase annuity may be recomputed if it is more beneficial to do so.

(10) Computation. Benefits using accruals after age 65 will begin to be computed January 1, 1988. No benefits will be recomputed for any annuitant who has withdrawn before January 1, 1988.

(11) Participation. Effective immediately, this Article shall apply to all persons eligible to participate regardless of age. Beginning immediately all eligible persons previously excluded from participation in the fund either voluntarily or involuntarily, shall be enrolled as participants and contributions shall begin and continue during the term of service.

(Source: P.A. 86-272.)

(40 ILCS 5/9-121.10) (from Ch. 108 1/2, par. 9-121.10)
Sec. 9-121.10. Transfer to Article 14.

(a) Any active member of the State Employees' Retirement System who is a State policeman, investigator for the Office of the Attorney General, an investigator for the Department of Revenue, investigator for the Secretary of State, or conservation police officer may apply for transfer of some or all of his creditable service as a member of the County Police Department, a county corrections officer, or a court services officer accumulated under this Article to the State Employees' Retirement System in accordance with Section 14-110. At the time of the transfer the Fund shall pay to the State Employees' Retirement System an amount equal to:

(1) the amounts accumulated to the credit of the applicant on the books of the Fund on the date of transfer for the service to be transferred; and

(2) the corresponding municipality credits, including interest, on the books of the Fund on the date of transfer; and

(3) any interest paid by the applicant in order to reinstate such service.

Participation in this Fund with respect to the credits transferred shall terminate on the date of transfer.

(b) Any person applying to transfer service under this Section may reinstate credit for service as a member of the County Police Department that was terminated by receipt of a refund, by paying to the Fund the amount of the refund with interest thereon at the actuarially assumed rate of interest, compounded annually, from the date of refund to the date of

payment.

(Source: P.A. 95-530, eff. 8-28-07; 96-745, eff. 8-25-09.)

(40 ILCS 5/9-121.11) (from Ch. 108 1/2, par. 9-121.11)

Sec. 9-121.11. Transfer of credit from Article 8 or 11. Until March 1, 1993, an employee may transfer to this Fund up to a total of 10 years of creditable service accumulated under Article 8 or 11 of this Code, upon payment to this Fund of (1) the amount by which the employee and employer contributions that would have been required if the employee had participated in this Fund during the period for which credit is being transferred, plus interest, exceeds the amount actually transferred from the Article 8 or 11 fund to this Fund, plus (2) interest on the amount determined under item (1) at the rate of 6% per year, compounded annually, from the date of the transfer to the date of payment.

(Source: P.A. 87-1265.)

(40 ILCS 5/9-121.12) (from Ch. 108 1/2, par. 9-121.12)

Sec. 9-121.12. Transfer to Article 18 system. Any active member of the Judges Retirement System who is eligible to transfer service credit to that System from this Fund under subsection (g) of Section 18-112 may apply for transfer of that service credit to the Judges Retirement System. The credits and creditable service shall be transferred upon application, and shall include payment by this Fund to the Judges Retirement System of:

(1) the amounts accumulated to the credit of the applicant for that service, including interest, on the books of the Fund on the date of transfer; and

(2) the corresponding employer credits computed and credited for that service under this Article, including interest, on the books of the Fund on the date of transfer.

Participation in this Fund as to the credits transferred under this Section shall terminate on the date of transfer.

(Source: P.A. 87-1265.)

(40 ILCS 5/9-121.13)

Sec. 9-121.13. Transfer of Article 5 credits.

(a) An active participant in the Fund who was employed by the office of the Cook County State's Attorney on January 1, 1995 may transfer to this Fund credits and creditable service accumulated under the pension fund established under Article 5 of this Code, as provided in Section 5-237, by submitting a written application to the Fund and paying to the Fund the amount, if any, by which the amount transferred to the Fund under Section 5-237 is less than the amount of employee and

employer contributions that would have been received by the Fund if the service being transferred had been served as a participant of this Fund, including interest at the rate of 6% per year, compounded annually, from the date of the service to the date of payment.

(b) Until July 1, 1998, an active participant in the Fund who is a member of the county police department may transfer to this Fund credits and creditable service accumulated under the pension fund established under Article 5 of this Code, as provided in Section 5-237, by submitting a written application to the Fund and paying to the Fund the amount, if any, by which the amount transferred to the Fund under Section 5-237 is less than the amount of employee and employer contributions that would have been received by the Fund if the service being transferred had been served as a participant of this Fund, including interest at the rate of 6% per year, compounded annually, from the date of the service to the date of payment.

(c) The applicant may elect to have the service transferred be deemed service as a member of the county police department; if the applicant so elects, the required payment shall be calculated on the basis of the rates applicable to members of the county police department.

(Source: P.A. 89-136, eff. 7-14-95; 90-32, eff. 6-27-97.)

(40 ILCS 5/9-121.15)

Sec. 9-121.15. Transfer of credit from Article 14 system. A current or former employee shall be entitled to service credit in the Fund for any creditable service transferred to this Fund from the State Employees' Retirement System under Section 14-105.7 of this Code. Credit under this Fund shall be granted upon receipt by the Fund of the amounts required to be transferred under Section 14-105.7; no additional contribution is necessary. (Source: P.A. 92-599, eff. 6-28-02.)

(40 ILCS 5/9-121.16)

Sec. 9-121.16. Contractual service to the Retirement Board. A person who has rendered continuous contractual services (other than legal or actuarial services) to the Retirement Board for a period of at least 5 years may establish creditable service in the Fund for up to 10 years of those services by making written application to the Board before July 1, 2003 and paying to the Fund an amount to be determined by the Board, equal to the employee contributions that would have been required if those services had been performed as an employee.

For the purposes of calculating the required payment, the Board may determine the applicable salary equivalent based on the compensation received by the person for performing those contractual services. The salary equivalent calculated under

this Section shall not be used for determining final average salary under Section 9-134 or any other provisions of this Code.

A person may not make optional contributions under Section 9-121.6 or 9-179.3 for periods of credit established under this Section.

(Source: P.A. 92-599, eff. 6-28-02.)

(40 ILCS 5/9-121.17)

Sec. 9-121.17. Transfer from Article 3. Until 6 months after the effective date, an employee may transfer to this Fund up to 6 years of creditable service accumulated under Article 3 of this Code, upon payment to this Fund of (1) the amount by which the employee and employer contributions that would have been required if the employee had participated in this Fund during the period for which credit is being transferred, plus interest, exceeds the amount actually transferred from the Article 3 fund to this Fund, plus (2) interest on the amount determined under item (1) at the rate of 6% per year, compounded annually, from the date of the transfer to the date of payment.

(Source: P.A. 95-504, eff. 8-28-07.)

(40 ILCS 5/9-121.18)

Sec. 9-121.18. Transfer to Article 5.

(a) Any active member of Article 5 of this Code may apply for transfer of some or all of his creditable service as a correctional officer with the county department of corrections accumulated under this Article to the Article 5 Fund in accordance with paragraph (b) of Section 5-234. At the time of the transfer the Fund shall pay to the Article 5 Fund an amount equal to:

(1) the amounts accumulated to the credit of the applicant on the books of the Fund on the date of transfer for the service to be transferred;

(2) the corresponding employer credits, including interest, on the books of the Fund on the date of transfer; and

(3) any interest paid by the applicant in order to reinstate such service.

Participation in this Fund with respect to the credits transferred shall terminate on the date of transfer.

(b) Any person applying to transfer service under this Section may reinstate credit for service as a member of the county department of corrections that was terminated by receipt of a refund, by paying to the Fund the amount of the refund with interest thereon at the actuarially assumed rate, compounded annually, from the date of refund to the date of payment.

(Source: P.A. 96-727, eff. 8-25-09.)

(40 ILCS 5/9-122) (from Ch. 108 1/2, par. 9-122)

Sec. 9-122. Time of fixing annuities-Waiver.

No annuity or disability benefit shall be fixed, granted, or paid under this Article before the effective date.

Any employee annuitant or widow annuitant may execute a waiver of his or her right to receive any part of his or her total annuity. A waiver shall take effect upon its being filed with the board. A waiver may not be revoked after it is executed and filed, except within the first 30 days after being filed.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-123) (from Ch. 108 1/2, par. 9-123)

Sec. 9-123. Prior service annuities-When due.

A "Prior Service Annuity" shall be credited to present employees in accordance with "The 1925 Act" for service rendered prior to the effective date.

Each such credit shall be improved by interest at the effective rate during the time the employee is in service until his annuity is fixed. In determining such credit, the employee's annual salary for his entire period of prior service shall be the salary in effect on the effective date.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-124) (from Ch. 108 1/2, par. 9-124)

Sec. 9-124. Age and service annuity.

An "Age and Service Annuity" shall be credited employees for contributing service rendered after the effective date.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-125) (from Ch. 108 1/2, par. 9-125)

Sec. 9-125. Annuities - Present employees and future entrants attaining age 65 in service. (a) A present employee who attains age 65 or more in service, having age and service and prior service annuity credits sufficient to provide an annuity as of age 65 equal to the amount he would have had if employee contributions and county contributions had been made in accordance with this Article during his entire term of service until age 65 shall be entitled upon withdrawal to an annuity from the sum accumulated for age and service annuity and the applicable credits for prior service annuity.

(b) A present employee who attains age 65 or more in service, and who does not have the credits described in paragraph (a), shall be entitled on the date of withdrawal, based upon the assumption that his age is then 65, to an annuity based on the sum accumulated for age and service annuity and the applicable credits for prior service annuity.

(c) A future entrant who attains age 65 in service shall be entitled, upon withdrawal, to age and service annuity provided from the sum accumulated for such annuity at such age.
(Source: P.A. 81-1536.)

(40 ILCS 5/9-126) (from Ch. 108 1/2, par. 9-126)

Sec. 9-126. Annuities--Present employees and future entrants--Withdrawal after age 60 and prior to 65.

An employee who attains age 60 or more but less than age 65 in service, upon withdrawal, shall be entitled to annuity as follows:

1. Present Employee--Age and service and prior service annuities provided from the total sum accumulated to his credit for such annuities on the date of withdrawal, computed as of his age on such date of withdrawal.

2. Future Entrant--Age and service annuity provided from the total sum accumulated to his credit for such annuity on the date of withdrawal, computed as of his age on such date of withdrawal.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-127) (from Ch. 108 1/2, par. 9-127)

Sec. 9-127. Annuities - Present employees and future entrants - Withdrawal after age 50 and prior to age 60. An employee who (i) withdraws prior to January 1, 1988, having attained age 55 or more but less than age 60 in service and having 10 or more years of service at date of withdrawal, or (ii) beginning January 1, 1988, attains age 50 in the service and withdraws before age 60 with at least 10 years of creditable service, shall be entitled to annuity, from the date of withdrawal, as follows:

1. Present employee and future entrant with 20 or more years of service - Age and service annuity provided from the total sum accumulated to his credit from employee contributions and county contributions for such annuity, and, for a present employee, prior service annuity from the total sum accumulated to his credit for such annuity.

2. Present employee and future entrant with 10 or more but less than 20 years of service - Age and service annuity provided from the total sum accumulated to his credit for such annuity from employee contributions, plus 1/10 of the corresponding credits accumulated for such annuity from county contributions for each year of service after the first 10 years; and, in addition in the case of a present employee, the total sum accumulated to his credit for prior service annuity on account of employee contributions to any county pension fund in operation in the county on the effective date, and 1/10 of prior

service annuity accumulated to his credit under "The 1925 Act" and this Article, for each year of service after the first 10 years.

Any such annuity shall be computed as of the employee's age on the date of withdrawal.

(Source: P.A. 85-964.)

(40 ILCS 5/9-128) (from Ch. 108 1/2, par. 9-128)

Sec. 9-128. Annuities - Present employees and future entrants - Withdrawal before age 50. An employee who, prior to January 1, 1988, withdraws after 10 years of service before age 55 and attains age 55 while out of service shall be entitled to annuity after attainment of age 55. An employee with at least 10 years of creditable service who withdraws from service on or after January 1, 1988 at less than age 50 shall be entitled to annuity upon attaining age 50. Such annuities shall be calculated as follows:

1. Present employee and future entrant with 20 or more years of service - Age and service annuity provided from the total sum accumulated to his credit from employee contributions and county contributions for such annuity, and, in addition in the case of a present employee, prior service annuity from the sum accumulated to his credit for such annuity.

2. Present employee and future entrant with 10 or more but less than 20 years of service - Age and service annuity provided from total sum accumulated to his credit for such annuities from employee contributions, plus 1/10 of the county contributions accumulated to his credit for each year of service after the first 10 years; and, in addition, in the case of a present employee, credits for prior service annuity on account of employee contributions to any county pension fund in operation in the county on the effective date, and 1/10 of the prior service annuity accumulated to his credit under "The 1925 Act" and this Article, for each year of service after the first 10 years.

Any such annuity shall be computed as though the employee were age 50 when the annuity was granted (age 55 for employees withdrawing before January 1, 1988), regardless of his actual age at the time of application for annuity. An employee shall not be entitled to annuity for any period between the date he attained age 50 (age 55 for employees withdrawing before January 1, 1988) and the date of application for annuity.

(Source: P.A. 85-964.)

(40 ILCS 5/9-128.1) (from Ch. 108 1/2, par. 9-128.1)

Sec. 9-128.1. Annuities for members of the County Police Department.

(a) In lieu of the regular or minimum annuity or annuities for any deputy sheriff who is a member of a County Police Department, he may, upon withdrawal from service after not less than 20 years of service in the position of deputy sheriff as defined below, upon or after attainment of age 55, receive a total annuity equal to 2% for each year of service based upon his highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal from service, subject to a maximum annuity equal to 75% of such average annual salary.

(b) Any deputy sheriff who withdraws from the service after July 1, 1979, after having attained age 53 in the service with 23 or more years of service credit shall be entitled to an annuity computed as follows if such annuity is greater than that provided in the foregoing paragraphs of this Section 9-128.1: An annuity equal to 50% of the average salary for the 4 highest consecutive years of the last 10 years of service plus additional annuity equal to 2% of such average salary for each completed year of service or fraction thereof rendered after his attainment of age 53 and the completion of 23 years of service, plus an additional annuity equal to 1% of such average salary for each completed year of service or fraction thereof in excess of 23 years up to age 53.

(c) Any deputy sheriff who withdraws from the service after December 31, 1987 with 20 or more years of service credit, shall be entitled, upon attainment of age 50, to an annuity computed as follows if such annuity is greater than that provided in the foregoing paragraphs of this Section 9-128.1: An annuity equal to 50% of the average salary for the 4 highest consecutive years of the last 10 years of service, plus additional annuity equal to 2% of such average salary for each completed year of service or fraction thereof in excess of 20 years.

(d) A deputy sheriff who reaches compulsory retirement age and who has less than 23 years of service shall be entitled to a minimum annuity equal to an amount determined by the product of (1) his years of service and (2) 2% of his average salary for the 4 consecutive highest years of salary within the last 10 years of service immediately prior to his reaching compulsory retirement age.

(e) Any deputy sheriff who retires after January 1, 1984 and elects to receive an annuity under this Section, and who has credits under this Article for service not as a deputy sheriff, shall be entitled to receive, in addition to the amount of annuity otherwise provided under this Section, an additional amount of annuity provided from the totals accumulated to his credit for prior service and age and service annuities for such service not as a deputy sheriff.

(f) The term "deputy sheriff" means an employee charged with

the duty of law enforcement as a deputy sheriff as specified in Section 1 of "An Act in relation to County Police Departments in certain Counties, creating a County Police Department Merit Board and defining its powers and duties", approved August 5, 1963, who rendered service in such position before and after such date.

The terms "deputy sheriff" and "member of a County Police Department" shall also include an elected sheriff of the county who has elected to become a contributor and who has submitted to the board his written election to be included within the provisions of this Section. With respect to any such sheriff, service as the elected sheriff of the county shall be deemed to be service in the position of deputy sheriff for the purposes of this Section provided that the employee contributions therefor are made at the rate prescribed for members of the County Police Department. A sheriff electing to be included under this Section may also elect to have his service as sheriff of the county before the date of such election included as service as a deputy sheriff for the purposes of this Section, by making an additional contribution for each year of such service, equal to the difference between the amount he would have contributed to the Fund during such year had he been contributing at the rate then in effect for members of the County Police Department and the amount actually contributed, plus interest thereon at the rate of 6% per annum from the end of such year to the date of payment.

(g) In no case shall an annual annuity provided in this Section 9-128.1 exceed 80% of the average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal from service.

A deputy sheriff may in addition, be entitled to the benefits provided by Section 9-133 or 9-133.1 if he so qualifies under such Sections.

(h) A deputy sheriff may elect, between January 1 and January 15, 1983, to transfer his creditable service as a member of the State Employees' Retirement System of Illinois to any Fund established under this Article of which he is a member, and such transferred creditable service shall be included as service for the purpose of calculating his benefits under this Article to the extent that the payment specified in Section 14-105.3 has been received by such Fund.

(i) An active deputy sheriff who has at least 15 years of service credit in that capacity may elect to have any or all of his credits under this Article for service not as a deputy sheriff deemed to be credits for service as a deputy sheriff, by filing a written election with the Board, accompanied by payment of an amount to be determined by the Board, equal to (1) the difference between the amount of employee contributions actually

contributed by the applicant for such service not as a deputy sheriff, and the amounts that would have been contributed had such contributions been made at the rates applicable to service as a deputy sheriff, plus (2) interest thereon at the rate of 3% per annum, compounded annually, from the date of service to the date of payment.

(j) Beginning on the effective date of this amendatory Act of 1996, the terms "deputy sheriff" and "member of a County Police Department" shall also include any chief of the County Police Department or undersheriff of the County Sheriff's Department who has submitted to the board his or her written election to be included within the provisions of this Section. With respect to any such police chief or undersheriff, service as a chief of the County Police Department or an undersheriff of the County Sheriff's Department shall be deemed to be service in the position of deputy sheriff for the purposes of this Section, provided that the employee contributions therefor are made at the rate prescribed for members of the County Police Department.

A chief of the County Police Department or undersheriff of the County Sheriff's Department electing to be included under this Section may also elect to have his or her service as chief of the County Police Department or undersheriff of the County Sheriff's Department before the date of the election included as service as a deputy sheriff for the purposes of this Section, by making an additional contribution for each year of such service, equal to the difference between the amount that he or she would have contributed to the Fund during that year at the rate then in effect for members of the County Police Department and the amount actually contributed, plus interest thereon at the rate of 6% per year, compounded annually, from the end of that year to the date of payment.

A chief of the County Police Department or undersheriff of the County Sheriff's Department who has elected to be included within the provisions of this Section may transfer to this Fund credits and creditable service accumulated under any pension fund or retirement system established under Article 3, 7, 8, 14, or 15, upon payment to the Fund of (1) the amount by which the employee contributions that would have been required if he or she had participated in this Fund during the period for which credit is being transferred, plus interest, plus an equal amount for employer contributions, exceeds the amounts actually transferred from that other fund or system to this Fund, plus (2) interest thereon at 6% per year, compounded annually, from the date of transfer to the date of payment.

A chief of the County Police Department or undersheriff of the County Sheriff's Department may purchase credits and creditable service for up to 2 years of public employment rendered to an out-of-state public agency. Payment for that

service shall be at the applicable rates in effect for employee and employer contributions during the period for which credit is being purchased, plus interest at the rate of 6% per year, compounded annually, from the date of service until the date of payment.

(Source: P.A. 89-643, eff. 8-9-96.)

(40 ILCS 5/9-128.2)

Sec. 9-128.2. Stipends. Any elected county officer who was entitled to receive a stipend from the State on or after July 1, 2009 and on or before June 30, 2010 may establish earnings credit for the amount of stipend not received, if the elected county official applies in writing to the fund within 6 months after the effective date of this amendatory Act of the 96th General Assembly and pays to the fund an amount equal to (i) employee contributions on the amount of stipend not received, (ii) employer contributions determined by the Board equal to the employer's normal cost of the benefit on the amount of stipend not received, plus (iii) interest on items (i) and (ii) at the actuarially assumed rate.

(Source: P.A. 96-961, eff. 7-2-10.)

(40 ILCS 5/9-129) (from Ch. 108 1/2, par. 9-129)

Sec. 9-129. Annuities-Re-entry into service. Annuity in excess of that fixed in Sections 9-126, 9-127 or 9-128 shall not be granted to any employee described therein, unless he re-entered service before age 65. If such re-entry occurs, his annuity shall be provided in accordance with Sections 9-125 to 9-128, inclusive, whichever are applicable.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-130) (from Ch. 108 1/2, par. 9-130)

Sec. 9-130. Service after time of fixing annuity.

Service rendered after the time of fixing an annuity shall not be considered for age and service annuity and for prior service annuity.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-131) (from Ch. 108 1/2, par. 9-131)

Sec. 9-131. Prior service annuity credits. (a) The sum to be credited for prior service annuity in the case of any present employee described in subdivision (a) of Section 9-109 shall be the entire sum credited for such purposes.

(b) The sum to be credited for prior service annuity in the case of any present employee described in subdivision (b) of Section 9-109 shall be the sum credited for such purpose less the excess which would have accumulated under this Article from

contributions by the employee after he attained age 65 if such contributions had been made from the effective date to the date of withdrawal with interest at the effective rate to the date of his withdrawal, over the amounts actually contributed for such purpose with like interest computed to such date of withdrawal; provided that the sum so computed shall be less than the sum credited for prior service annuity under the foregoing provisions of this Article. If the sum so computed shall be equal to or greater than the sum credited for prior service annuity as aforesaid, such employee shall not be entitled to prior service annuity.

(Source: P.A. 81-1536.)

(40 ILCS 5/9-132) (from Ch. 108 1/2, par. 9-132)

Sec. 9-132. Minimum annuity.

A present employee who was a contributor to a county pension fund in operation on the effective date who withdraws on or after such date having 20 or more years of service and for whom the amount of annuity provided by this Article is less than the amount stated in this section has a right to receive annuity as follows:

(a) \$600 a year after the date of withdrawal if he is age 55 or more at such time;

(b) \$600 a year after the date he becomes age 55 if he is less than such age when he withdraws.

In addition to the combined age and service and prior service annuities to which a present employee is entitled, an employee with 24 or more years of service who has attained age 65 or more at the time he withdraws is entitled to receive a sum equal to the difference between the combined age and service annuity and prior service annuity, and 1/3 of his salary at the date of his withdrawal.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-133) (from Ch. 108 1/2, par. 9-133)

Sec. 9-133. Automatic increase in annuity.

(a) An employee who retired or retires from service after December 31, 1959, having attained age 60 or more or, beginning January 1, 1991, having attained 30 or more years of creditable service, shall, in the month of January of the year following the year in which the first anniversary of retirement occurs, have his then fixed and payable monthly annuity increased by 1 1/2%, and such first fixed annuity as granted at retirement increased by a further 1 1/2% in January of each year thereafter. Beginning with January of the year 1972, such increases shall be at the rate of 2% in lieu of the aforesaid specified 1 1/2%. Beginning with January of the year 1982, such

increases shall be at the rate of 3% in lieu of the aforesaid specified 2%. Beginning January 1, 1998, these increases shall be at the rate of 3% of the current amount of the annuity, including any previous increases received under this Article, without regard to whether the annuitant is in service on or after the effective date of this amendatory Act of 1997.

An employee who retires on annuity before age 60 and, beginning January 1, 1991, with less than 30 years of creditable service shall receive such increases beginning with January of the year immediately following the year in which he attains the age of 60 years. An employee who retires on annuity before age 60 and before January 1, 1991, with at least 30 years of creditable service, shall be entitled to receive the first increase under this subsection no later than January 1, 1993.

For an employee who, in accordance with the provisions of Section 9-108.1 of this Act, shall have become a member of the State System established under Article 14 on February 1, 1974, the first such automatic increase shall begin in January of 1975.

(b) Subsection (a) is not applicable to an employee retiring and receiving a term annuity, as defined in this Act, nor to any otherwise qualified employee who retires before he makes employee contributions (at the 1/2 of 1% rate as provided in this Section) for this additional annuity for not less than the equivalent of one full year. Such employee, however, shall make arrangement to pay to the fund a balance of such contributions, based on his final salary, as will bring such 1/2 of 1% contributions, computed without interest, to the equivalent of one year's contributions.

Beginning with the month of January, 1960, each employee shall contribute by means of salary deductions 1/2 of 1% of each salary payment, concurrently with and in addition to the employee contributions otherwise provided for annuity purposes.

Each such additional contribution shall be used, together with county contributions, to defray the cost of the specified annuity increments.

Such additional employee contributions are not refundable, except to an employee who withdraws and applies for refund under this Article, or applies for annuity, and also in cases where a term annuity becomes payable. In such cases his contributions shall be refunded, without interest.

(Source: P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-133.1) (from Ch. 108 1/2, par. 9-133.1)

Sec. 9-133.1. Automatic increases in annuity for certain heretofore retired participants. A retired employee retired at age 55 or over and who (a) is receiving annuity based on a service credit of 20 or more years, and (b) does not qualify for

the automatic increases in annuity provided for in Sec. 9-133 of this Article, and (c) elects to make a contribution to the Fund at a time and manner prescribed by the Retirement Board, of a sum equal to 1% of the final average monthly salary forming the basis of the calculation of their annuity multiplied by years of credited service, or 1% of their final monthly salary multiplied by years of credited service in any case where the final average salary is not used in the calculation, shall have his original fixed and payable monthly amount of annuity increased in January of the year following the year in which he attains the age of 65 years, if such age of 65 years is attained in the year 1969 or later, by an amount equal to 1 1/2%, and by an equal additional 1 1/2% in January of each year thereafter. Beginning with January of the year 1972, such increases shall be at the rate of 2% in lieu of the aforesaid specified 1 1/2%. Beginning with January of the year 1982, such increases shall be at the rate of 3% in lieu of the aforesaid specified 2%. Beginning January 1, 1998, these increases shall be at the rate of 3% of the current amount of the annuity, including any previous increases received under this Article, without regard to whether the annuitant is in service on or after the effective date of this amendatory Act of 1997.

In those cases in which the retired employee receiving annuity has attained the age of 66 or more years in the year 1969, he shall have such annuity increased in January of the year 1970 by an amount equal to 1 1/2% multiplied by the number equal to the number of months of January elapsing from and including January of the year immediately following the year he attained the age of 65 years if retired at or prior to age 65, or from and including January of the year immediately following the year of retirement if retired at an age greater than 65 years, to and including January of the year 1970, and by an equal additional 1 1/2% in January of each year thereafter. Beginning with January of the year 1972, such increases shall be at the rate of 2% in lieu of the aforesaid specified 1 1/2%. Beginning with January of the year 1982, such increases shall be at the rate of 3% in lieu of the aforesaid specified 2%. Beginning January 1, 1998, these increases shall be at the rate of 3% of the current amount of the annuity, including any previous increases received under this Article, without regard to whether the annuitant is in service on or after the effective date of this amendatory Act of 1997.

To defray the annual cost of such increases, the annual interest income of the Fund, accruing from investments held by the Fund, exclusive of gains or losses on sales or exchanges of assets during the year, over and above 4% a year, shall be used to the extent necessary and available to finance the cost of

such increases for the following year.
(Source: P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-134) (from Ch. 108 1/2, par. 9-134)

Sec. 9-134. Minimum annuity - Additional provisions.

(a) An employee who withdraws after July 1, 1957 at age 60 or more with 20 or more years of service, for whom the amount of age and service and prior service annuity combined is less than the amount stated in this Section from the date of withdrawal, instead of all annuities otherwise provided in this Article, is entitled to receive an annuity for life of an amount equal to 1 2/3% for each year of service, of his highest average annual salary for any 5 consecutive years within the last 10 years of service immediately preceding the date of withdrawal; provided that in the case of any employee who withdraws on or after July 1, 1971, such employee age 60 or over with 20 or more years of service, or who withdraws on or after January 1, 1982 and on or after attainment of age 65 with 10 or more years of service, shall instead receive an annuity for life equal to 1.67% for each of the first 10 years of service; 1.90% for each of the next 10 years of service; 2.10% for each year of service in excess of 20 but not exceeding 30; and 2.30% for each year of service in excess of 30, based on the highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal.

An employee who withdraws after July 1, 1957, but prior to January 1, 1988, with 20 or more years of service, before age 60 is entitled to annuity, to begin not earlier than age 55, if under such age at withdrawal, as computed in the last preceding paragraph, reduced 1/2 of 1% for each full month or fractional part thereof that his attained age when annuity is to begin is less than 60 to the end that the total reduction at age 55 shall be 30%, except that an employee retiring at age 55 or over but less than age 60, having at least 35 years of service, shall not be subject to the reduction in his retirement annuity because of retirement below age 60.

An employee who withdraws on or after January 1, 1988, with 20 or more years of service and before age 60, is entitled to annuity as computed above, to begin not earlier than age 50 if under such age at withdrawal, reduced 1/2 of 1% for each full month or fractional part thereof that his attained age when annuity is to begin is less than 60, to the end that the total reduction at age 50 shall be 60%, except that an employee retiring at age 50 or over but less than age 60, having at least 30 years of service, shall not be subject to the reduction in retirement annuity because of retirement below age 60.

An employee who withdraws on or after January 1, 1992 but before January 1, 1993, at age 60 or over with 5 or more years

of service, may elect, in lieu of any other employee annuity provided in this Section, to receive an annuity for life equal to 2.20% for each of the first 20 years of service, and 2.40% for each year of service in excess of 20, based on the highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal. An employee who withdraws on or after January 1, 1992, but before January 1, 1993, on or after attainment of age 55 but before attainment of age 60 with 5 or more years of service, is entitled to elect such annuity, but the annuity shall be reduced 0.25% for each full month or fractional part thereof that his attained age when the annuity is to begin is less than age 60, to the end that the total reduction at age 55 shall be 15%, except that an employee retiring at age 55 or over but less than age 60, having at least 30 years of service, shall not be subject to the reduction in retirement annuity because of retirement below age 60. This annuity benefit formula shall only apply to those employees who are age 55 or over prior to January 1, 1993, and who elect to withdraw at age 55 or over on or after January 1, 1992 but before January 1, 1993.

An employee who withdraws on or after July 1, 1996 but before August 1, 1996, at age 55 or over with 8 or more years of service, may elect, in lieu of any other employee annuity provided in this Section, to receive an annuity for life equal to 2.20% for each of the first 20 years of service, and 2.40% for each year of service in excess of 20, based on the highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal, but the annuity shall be reduced by 0.25% for each full month or fractional part thereof that the annuitant's attained age when the annuity is to begin is less than age 60, unless the annuitant has at least 30 years of service.

The maximum annuity under this paragraph (a) shall not exceed 70% of highest average annual salary for any 5 consecutive years within the last 10 years of service in the case of an employee who withdraws prior to July 1, 1971, and 75% of the highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal if withdrawal takes place on or after July 1, 1971 and prior to January 1, 1988, and 80% of the highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal if withdrawal takes place on or after January 1, 1988. Fifteen hundred dollars shall be considered the minimum amount of annual salary for any year, and the maximum shall be his salary as defined in this Article, except that for the years before 1957 and subsequent to 1952 the maximum annual salary to be considered shall be \$6,000, and for any year before the year

1953, \$4,800.

(b) Any employee who withdraws on or after July 1, 1985 but prior to January 1, 1988, at age 60 or over with 10 or more years of service, may elect in lieu of the benefit in paragraph (a) to receive an annuity for life equal to 2.00% for each year of service, based on the highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal. An employee who withdraws on or after July 1, 1985, but prior to January 1, 1988, with 10 or more years of service, but before age 60, is entitled to elect such annuity, to begin not earlier than age 55, but the annuity shall be reduced 0.5% for each full month or fractional part thereof that his attained age when the annuity is to begin is less than 60, to the end that the total reduction at age 55 shall be 30%; except that an employee retiring at age 55 or over but less than age 60, having at least 30 years of service, shall not be subject to the reduction in retirement annuity because of retirement below age 60.

An employee who withdraws on or after January 1, 1988, at age 60 or over with 10 or more years of service, may elect, in lieu of the benefit in paragraph (a), to receive an annuity for life equal to 2.20% for each of the first 20 years of service, and 2.4% for each year of service in excess of 20, based on the highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal. An employee who withdraws on or after January 1, 1988, with 10 or more years of service, but before age 60, is entitled to elect such annuity, to begin not earlier than age 50, but the annuity shall be reduced 0.5% for each full month or fractional part thereof that his attained age when the annuity is to begin is less than 60, to the end that the total reduction at age 50 shall be 60%, except that an employee retiring at age 50 or over but less than age 60, having at least 30 years of service, shall not be subject to the reduction in retirement annuity because of retirement below age 60.

An employee who withdraws on or after June 30, 2002 with 10 or more years of service may elect, in lieu of any other retirement annuity provided under this Article, to receive an annuity for life, beginning no earlier than upon attainment of age 50, equal to 2.40% of his or her highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding withdrawal, for each year of service. If the employee has less than 30 years of service, the annuity shall be reduced by 0.5% for each full month or remaining fraction thereof that the employee's attained age when the annuity is to begin is less than 60.

The maximum annuity under this paragraph (b) shall not exceed 75% of the highest average annual salary for any 4

consecutive years within the last 10 years of service immediately preceding the date of withdrawal if withdrawal occurs prior to January 1, 1988, or 80% of the highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal if withdrawal takes place on or after January 1, 1988.

The provisions of this paragraph (b) do not apply to any former County employee receiving an annuity from the fund, who re-enters service as a County employee, unless he renders at least 3 years of additional service after the date of re-entry.

(c) For an employee receiving disability benefit, the salary for annuity purposes under paragraph (a) or (b) of this Section shall, for all periods of disability benefit subsequent to the year 1956, be the amount on which his disability benefit was based.

(d) A county employee with 20 or more years of service, whose entire disability benefit credit period expires before attainment of age 50 (age 55 if expiration occurs before January 1, 1988), while still disabled for service is entitled upon withdrawal to the larger of:

(1) The minimum annuity provided above, assuming that he is then age 50 (age 55 if expiration occurs before January 1, 1988), and reducing such annuity to its actuarial equivalent at his attained age on such date, or

(2) the annuity provided from his age and service and prior service annuity credits.

(e) The minimum annuity provisions above do not apply to any former county employee receiving an annuity from the fund, who re-enters service as a county employee, unless he renders at least 3 years of additional service after the date of re-entry.

(f) Any employee in service on July 1, 1947, or who enters service thereafter before attaining age 65 and withdraws after age 65 with less than 10 years of service for whom the annuity has been fixed under the foregoing Sections of this Article, shall, instead of the annuity so fixed, receive an annuity as follows:

Such amount as he could have received had the accumulated amounts for annuity been improved with interest at the effective rate to the date of withdrawal, or to attainment of age 70, whichever is earlier, and had the county contributed to such earlier date for age and service annuity the amount that it would have contributed had he been under age 65, after the date his annuity was fixed in accordance with this Article, and assuming his annuity were computed from such accumulations as of his age on such earlier date. However those employees who before July 1, 1953, made additional contributions in accordance with this Article, the annuity so computed under this paragraph shall not exceed the annuity which would be payable under the other

provisions of this Section if the employee concerned was credited with 20 years of service and would qualify for annuity thereunder.

(g) Instead of the annuity provided in this or any other Section of this Article, an employee having attained age 65 with at least 15 years of service may elect to receive a minimum annual annuity for life equal to 1% of the highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding retirement for each year of service, plus the sum of \$25 for each year of service provided that no such minimum annual annuity may be greater than 60% of such highest average annual salary.

(h) The annuity is payable in equal monthly installments.

(i) If, by operation of law, a function of a governmental unit, as defined by Section 20-107 of this Code, is transferred in whole or in part to the county in which this Article 9 is created as set forth in Section 9-101, and employees of the governmental unit are transferred as a class to such county, the earnings credits in the retirement system covering the governmental unit which have been validated under Section 20-109 of this Code shall be considered in determining the highest average annual salary for purposes of this Section 9-134.

(j) The annuity being paid to an employee annuitant on July 1, 1988, shall be increased on that date by 1% for each full year that has elapsed from the date the annuity began.

(k) Notwithstanding anything to the contrary in this Article 9, Section 20-131 shall not apply to an employee who withdraws on or after January 1, 1988, but prior to attaining age 55. Therefore, no employee shall be entitled to elect to have the alternative formula previously set forth in Section 20-122 prior to the amendatory Act of 1975 apply to any annuity, the payment of which commenced after January 1, 1988, but prior to such employee's attainment of age 55.

(Source: P.A. 92-599, eff. 6-28-02.)

(40 ILCS 5/9-134.1) (from Ch. 108 1/2, par. 9-134.1)

Sec. 9-134.1. Preservation of minimum annuity rights for certain house of correction employees and their widows.

In the case of employees who were contributors to and participants as of December 31, 1968, in a House of Correction Employees' Pension Fund, who, by virtue of group transfer on January 1, 1969 became participants in Municipal Employees' Annuity and Benefit Fund under Article 8 of this Code, and who, because of further group or class transfer become participants in the Fund created under Article 9 of this Code, Section 8-136.2 of this Code preserving certain minimum annuity rights for certain house of correction employees and their widows is made applicable to such employees so transferred to this Fund, and

such Section is made part of this Article 9 so that such transferred employees are guaranteed such rights under the Fund created by this Article 9 of the Illinois Pension Code as outlined in Section 8-136.2 of this Code.

(Source: P.A. 76-1574.)

(40 ILCS 5/9-134.2) (from Ch. 108 1/2, par. 9-134.2)

Sec. 9-134.2. Early retirement incentives.

(a) To be eligible for the benefits provided in this Section, a person must:

(1) be a current contributing member of this Fund who, on May 1, 1992 and within 30 days prior to the date of retirement, is (i) in active payroll status in a position of employment under this Article, or (ii) receiving disability benefits under Section 9-156 or 9-157;

(2) have not previously retired under this Article;

(3) file with the Board before May 1, 1993, a written application requesting the benefits provided in this Section;

(4) elect to retire under this Section on or after December 1, 1992 and on or before May 29, 1993 (or the date established under subsection (c), if applicable);

(5) have attained age 55 on or before the date of retirement; and

(6) have at least 10 years of creditable service under this Fund or any of the participating systems under the Retirement Systems Reciprocal Act by the effective date of the retirement annuity.

(b) An employee who qualifies for the benefits provided under this Section shall be entitled to the following:

(1) The employee's retirement annuity, as calculated under the other provisions of this Article, shall be increased at the time of retirement by an amount equal to 1% of the employee's average annual salary for the highest 4 consecutive years within the last 10 years of service, multiplied by the employee's number of years of service credit in this Fund up to a maximum of 10 years; except that the total retirement annuity, including any additional benefits elected under Section 9-121.6 or 9-179.3, shall not exceed 80% of that highest average annual salary.

(2) If the employee's retirement annuity is calculated under Section 9-134, the employee shall not be subject to the reduction in retirement annuity because of retirement below age 60 that is otherwise required under that Section.

(c) In the case of an employee whose immediate retirement could jeopardize public safety or create hardship for the

employer, the deadline for retirement provided in subdivision (a) (4) of this Section may be extended to a specified date, no later than November 30, 1993, by the employee's department head, with the approval of the President of the County Board. In the case of an employee who is not employed by a department of the County, the employee's "department head", for the purposes of this Section, shall be a person designated by the President of the County Board.

(d) Notwithstanding Section 9-161, an annuitant who reenters service under this Article after receiving a retirement annuity based on benefits provided under this Section thereby forfeits the right to continue to receive those benefits, and shall have his or her retirement annuity recalculated without the benefits provided in this Section.

(Source: P.A. 87-1130.)

(40 ILCS 5/9-134.3)

Sec. 9-134.3. Early retirement incentives.

(a) To be eligible for the benefits provided in this Section, a person must:

(1) be a current contributing member of the Fund established under this Article who, on May 1, 1997 and within 30 days prior to the date of retirement, is (i) in active payroll status in a position of employment under this Article or (ii) receiving disability benefits under Section 9-156 or 9-157; or else be eligible under subsection (g);

(2) have not previously retired from the Fund, except as provided under subsection (g);

(3) file with the Board before October 1, 1997 (or the date specified in subsection (g), if applicable) a written application requesting the benefits provided in this Section;

(4) elect to retire under this Section on or after September 1, 1997 and on or before February 28, 1998 (or the date established under subsection (d) or (g), if applicable);

(5) have attained age 55 on or before the date of retirement and before February 28, 1998; and

(6) have at least 10 years of creditable service in the Fund, excluding service in any of the other participating systems under the Retirement Systems Reciprocal Act, by the effective date of the retirement annuity or February 28, 1998, whichever occurs first.

(b) An employee who qualifies for the benefits provided under this Section shall be entitled to the following:

(1) The employee's retirement annuity, as calculated

under the other provisions of this Article, shall be increased at the time of retirement by an amount equal to 1% of the employee's average annual salary for the highest 4 consecutive years within the last 10 years of service, multiplied by the employee's number of years of service credit in this Fund up to a maximum of 10 years; except that the total retirement annuity, including any additional benefits elected under Section 9-121.6 or 9-179.3, shall not exceed 80% of that highest average annual salary.

(2) If the employee's retirement annuity is calculated under Section 9-134, the employee shall not be subject to the reduction in retirement annuity because of retirement below age 60 that is otherwise required under that Section.

(c) A person who elects to retire under the provisions of this Section thereby relinquishes his or her right, if any, to have the retirement annuity calculated under the alternative formula formerly set forth in Section 20-122 of the Retirement Systems Reciprocal Act.

(d) In the case of an employee whose immediate retirement could jeopardize public safety or create hardship for the employer, the deadline for retirement provided in subdivision (a)(4) of this Section may be extended to a specified date, no later than August 31, 1998, by the employee's department head, with the approval of the President of the County Board. In the case of an employee who is not employed by a department of the County, the employee's "department head", for the purposes of this Section, shall be a person designated by the President of the County Board.

(e) Notwithstanding Section 9-161, an annuitant who reenters service under this Article after receiving a retirement annuity based on benefits provided under this Section thereby forfeits the right to continue to receive those benefits and shall have his or her retirement annuity recalculated without the benefits provided in this Section.

(f) This Section also applies to the Fund established under Article 10 of this Code.

(g) A person who (1) was a participating employee on November 30, 1996, (2) was laid off on or after December 1, 1996 and before May 1, 1997 due to the elimination of the employee's job or position, (3) meets the requirements of items (3) through (6) of subsection (a), and (4) has not been reinstated as a Cook County employee since being laid off is eligible for the benefits provided under this Section. For such a person, the application required under subdivision (a)(3) of this Section must be filed within 60 days after the effective date of this amendatory Act of the 92nd General Assembly, and the date of retirement must be within 60 days after the effective date of

this amendatory Act.

In the case of a person eligible under this subsection (g) who began to receive a retirement annuity before the effective date of this amendatory Act, the annuity shall be recalculated to include the increase under this Section, and that increase shall take effect on the first annuity payment date following the date of application.

(Source: P.A. 92-599, eff. 6-28-02.)

(40 ILCS 5/9-134.4)

Sec. 9-134.4. Early retirement incentives.

(a) To be eligible for the benefits provided in this Section, a person must:

(1) be a current contributing member of the Fund established under this Article who, on January 1, 2001 and within 30 days prior to the date of retirement, is (i) in active payroll status in a position of employment under this Article or (ii) receiving disability benefits under Section 9-156 or 9-157;

(2) have not previously retired from the Fund;

(3) file with the Board before March 1, 2003 a written application requesting the benefits provided in this Section;

(4) elect to retire under this Section on or after November 30, 2002 and on or before March 31, 2003 (or the date established under subsection (d), if applicable);

(5) have attained age 50 on or before the date of retirement and on or before March 31, 2003; and

(6) have at least 20 years of creditable service in the Fund, excluding service in any of the other participating systems under the Retirement Systems Reciprocal Act, by the effective date of the retirement annuity or March 31, 2003, whichever occurs first.

(b) An employee who qualifies for the benefits provided under this Section shall be entitled to the following:

(1) The employee's retirement annuity, as calculated under the other provisions of this Article, shall be increased at the time of retirement by an amount equal to 1% of the employee's average annual salary for the highest 4 consecutive years within the last 10 years of service, multiplied by the employee's number of years of service credit in this Fund up to a maximum of 10 years; except that the total retirement annuity, including any additional benefits elected under Section 9-121.6 or 9-179.3, shall not exceed 80% of that highest average annual salary.

(2) If the employee's retirement annuity is calculated under Section 9-134, the employee shall not be

subject to the reduction in retirement annuity because of retirement below age 60 that is otherwise required under that Section.

(c) A person who elects to retire under the provisions of this Section thereby relinquishes his or her right, if any, to have the retirement annuity calculated under the alternative formula formerly set forth in Section 20-122 of the Retirement Systems Reciprocal Act.

(d) In the case of an employee whose immediate retirement could jeopardize public safety or create hardship for the employer, the deadline for retirement provided in subdivision (a)(4) of this Section may be extended to a specified date, no later than September 30, 2003, by the employee's department head, with the approval of the President of the County Board. In the case of an employee who is not employed by a department of the County, the employee's "department head", for the purposes of this Section, shall be a person designated by the President of the County Board.

(e) Notwithstanding Section 9-161, an annuitant who reenters service under this Article after receiving a retirement annuity based on benefits provided under this Section thereby forfeits the right to continue to receive those benefits and shall have his or her retirement annuity recalculated without the benefits provided in this Section.

(f) This Section also applies to the Fund established under Article 10 of this Code.

(Source: P.A. 92-599, eff. 6-28-02.)

(40 ILCS 5/9-134.5)

Sec. 9-134.5. Alternative retirement cancellation payment.

(a) To be eligible for the alternative retirement cancellation payment provided in this Section, a person must:

(1) be a member of this Fund who, on December 31, 2006, was (i) in active payroll status as an employee and continuously employed in a position on and after the effective date of this Section and (ii) an active contributor to this Fund with respect to that employment;

(2) have not previously received any retirement annuity under this Article;

(3) file with the Board on or before 45 days after the effective date of this Section, a written application requesting the alternative retirement cancellation payment provided in this Section;

(4) terminate employment under this Article no later than 60 days after the effective date of this Section; and

(5) if there is a QILDRO in effect against the person, file with the Board the written consent of all

alternate payees under the QILDRO to the election of an alternative retirement cancellation payment under this Section.

(b) In lieu of any retirement annuity or other benefit provided under this Article, a person who qualifies for and elects to receive the alternative retirement cancellation payment under this Section shall be entitled to receive a one-time lump sum retirement cancellation payment equal to the amount of his or her contributions to the Fund (including any employee contributions for optional service credit and including any employee contributions paid by the employer or credited to the employee during disability) on the date of termination, with regular interest, multiplied by 1.5.

(c) Notwithstanding any other provision of this Article, a person who receives an alternative retirement cancellation payment under this Section thereby forfeits the right to any other retirement or disability benefit or refund under this Article, and no widow's, survivor's, or death benefit deriving from that person shall be payable under this Article. Upon accepting an alternative retirement cancellation payment under this Section, the person's creditable service and all other rights in the Fund are terminated for all purposes.

(d) To the extent permitted by federal law, a person who receives an alternative retirement cancellation payment under this Section may direct the Fund to pay all or a portion of that payment as a rollover into another retirement plan or account qualified under the Internal Revenue Code of 1986, as amended.

(e) Notwithstanding any other provision of this Article, a person who has received an alternative retirement cancellation payment under this Section and who reenters service under this Article must first repay to the Fund the amount by which that alternative retirement cancellation payment exceeded the amount of his or her refundable employee contributions with interest at 6% per annum. For the purposes of re-establishing creditable service that was terminated upon election of the alternative retirement cancellation payment, the portion of the alternative retirement cancellation payment representing refundable employee contributions shall be deemed a refund repayable in accordance with Section 9-163.

(f) No individual who receives an alternative retirement cancellation payment under this Section may return to active payroll status within 365 days after separation from service to the employer.

(Source: P.A. 95-369, eff. 8-23-07; 95-876, eff. 8-21-08.)

(40 ILCS 5/9-135) (from Ch. 108 1/2, par. 9-135)
Sec. 9-135. Reversionary annuity.

(a) An employee, prior to retirement on annuity, may elect

to take a lesser amount of annuity and provide, with the actuarial value of the amount by which his annuity is reduced, a reversionary annuity for a wife, husband, parent, child, brother or sister. The option shall be exercised by filing a written designation with the board prior to retirement, and may be revoked by the employee at any time before retirement. The death of the employee prior to his retirement shall automatically void the option.

(b) The death of the designated reversionary annuitant prior to the employee's retirement shall automatically void the option. If the reversionary annuitant dies after the employee's retirement and before the death of the employee annuitant, the reduced annuity being paid to the retired employee annuitant shall be increased to the amount of annuity before reduction for the reversionary annuity and no reversionary annuity shall be payable.

The option is subject to the further condition that no reversionary annuity shall be paid if the employee dies before the expiration of 730 days from the date his written designation was filed with the board, even though he has retired and is receiving a reduced annuity.

(c) The employee exercising this option shall not reduce his retirement annuity by more than \$100 a month or by 25%, whichever is the lesser, or elect to provide a reversionary annuity of less than \$50 per month. After July 1, 1981 the \$100 limitation shall not apply. No option shall be permitted if the reversionary annuity for a widow, when added to the widow's annuity payable under this Article, exceeds 80% of the reduced annuity payable to the employee.

(d) A reversionary annuity shall begin on the day following the death of the employee annuitant, with the first payment to be made on the first day of the calendar month following the death of the employee annuitant and the last payment to be made on the first day of the calendar month in which the reversionary annuitant dies.

(e) The increases in annuity provided in Section 9-133 of this Article shall, as to an employee so electing a reduced annuity, relate to the amount of the original annuity, and such amount shall constitute the annuity on which such automatic increases shall be based.

(f) The amount of the monthly reversionary annuity shall be determined by multiplying the amount of the monthly reduction in the employee's annuity by the factor in the following table based on the age of the employee and the difference in the age of the employee and the age of the reversionary annuitant at the starting date of the employee's annuity:

Reversionary Annuitant's Age
in Years Younger than Employee

Employee's Age	0-4	5-9	10-14	15-19	20-24	25-29	30 or more
50-51	5.32	4.60	4.09	3.61	3.43	3.30	3.09
52-54	4.71	4.04	3.56	3.11	2.96	2.79	2.65
55-57	4.14	3.52	3.08	2.76	2.54	2.38	2.26
58-60	3.62	3.05	2.65	2.36	2.16	2.02	1.91
61-63	3.16	2.63	2.27	2.01	1.83	1.70	1.60
64-66	2.74	2.27	1.94	1.70	1.54	1.43	1.34
67-69	2.40	1.97	1.66	1.45	1.30	1.20	1.12
70 & Over	2.11	1.71	1.43	1.24	1.10	1.01	0.94

In Years Older than Employee							31 or more
Employee's Age	1-5	6-10	11-15	16-20	21-25	26-30	
50-51	6.31	7.74	9.71	12.44	16.12	20.90	27.23
52-54	5.67	7.01	8.87	11.43	14.90	19.52	25.92
55-57	5.03	6.28	8.03	10.43	13.69	18.16	24.67
58-60	4.44	5.60	7.22	9.44	12.49	16.84	23.50
61-63	3.90	4.97	6.44	8.46	11.30	15.56	22.50
64-66	3.43	4.38	5.69	7.51	10.17	14.33	21.61
67-69	3.03	3.88	5.07	6.75	9.32	13.60	21.83
70 & Over	2.68	3.44	4.52	6.12	8.70	13.34	24.21

(Source: P.A. 86-1488.)

(40 ILCS 5/9-135.1) (from Ch. 108 1/2, par. 9-135.1)

Sec. 9-135.1. Death benefit. Upon the death of an employee in service or while receiving a retirement annuity, a death benefit of \$1,000 shall be payable to such beneficiary as the member may have nominated by written direction duly acknowledged and filed with the Board, or if there is no such nomination, to the estate of the employee.

(Source: P.A. 87-794.)

(40 ILCS 5/9-136) (from Ch. 108 1/2, par. 9-136)

Sec. 9-136. Widow's prior service annuity.

A "Widow's Prior Service Annuity" shall be credited for the widow of a male present employee for service prior to the effective date in accordance with "The 1925 Act" and this Article, payable from and after the death of the employee.

The amount so credited shall be improved by interest at the effective rate during the time the employee is in the service or until the employee attains age 65 or withdraws from the service, whichever event first occurs.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-137) (from Ch. 108 1/2, par. 9-137)

Sec. 9-137. Widow's annuity.

A "Widow's Annuity" shall be credited for a widow of any male employee covering service after the effective date, payable from and after his death.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-138) (from Ch. 108 1/2, par. 9-138)

Sec. 9-138. Widow's annuity-Present employee age 65 on effective date.

The widow of a present employee who is age 65 or more on the effective date is entitled after his death to an annuity fixed as of the date he becomes age 65.

The annuity shall be that provided on a reversionary annuity basis from the credit for widow's prior service annuity on the effective date.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-139) (from Ch. 108 1/2, par. 9-139)

Sec. 9-139. Widow's annuity-Present employees and future entrants attaining age 65 in service.

The widow of a present employee who attains age 65 while in service after the effective date, or of a future entrant who attains age 65 while in service, is entitled, after the date of his death, to an annuity fixed for the wife of such present employee or future entrant on the date he attains age 65.

The widow is entitled to annuity as follows:

If the employee's withdrawal occurs after age 65 and he enters upon annuity or if the employee's death occurs in the service after he has attained age 65 the annuity shall be that provided on a reversionary annuity basis from the total sum accumulated to his credit for widow's annuity and (if he was a present employee) widow's prior service annuity as of the date he became age 65.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-140) (from Ch. 108 1/2, par. 9-140)

Sec. 9-140. Widow's annuity-Present employees and future entrants-Death in service before 65.

The widow of an employee whose death occurs in service before age 65 shall be entitled to an annuity of the amount provided on a single life annuity basis from the total sum accumulated to his credit as of the date of death in service for age and service annuity and widow's annuity, plus the credit for prior service annuity and widow's prior service annuity, if he was a present employee; but no part thereof representing contributions by the county shall be used to provide an annuity

in excess of that which she would have had if the employee had lived and remained in service at the rate of his final salary until he became age 65, and the widow's annuity were fixed on a reversionary annuity basis as provided in this Article. The annuity shall be computed as of the date of the employee's death.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-141) (from Ch. 108 1/2, par. 9-141)

Sec. 9-141. Widow's annuity-Present employees and future entrants-Withdrawal after age 60 but before 65.

The widow of an employee who attains age 60 or more but less than age 65 while in service and who withdraws from service shall be entitled after his death, to an annuity fixed on the date of withdrawal.

The annuity shall be the amount provided on a reversionary annuity basis from the total sum accumulated to his credit for widow's annuity and (if he was a present employee) widow's prior service annuity as of the date of withdrawal.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-142) (from Ch. 108 1/2, par. 9-142)

Sec. 9-142. Widow's annuity - Present employees and future entrants - Withdrawal after age 50 but before 60. The widow of an employee who (1) attains age 50 or more (age 55 if withdrawal occurs before January 1, 1988) but less than age 60 in service, and (2) has served 10 or more years, and (3) withdraws from service, shall be entitled after the employee's death to an annuity fixed as of the date of withdrawal.

The widow is entitled to receive the amount provided on a reversionary annuity basis from the total sum accumulated to the employee's credit on the date when the annuity was fixed as follows:

(1) If service is 20 or more years, the total credits for widow's annuity and in addition, if he was a present employee, the total credits for widow's prior service annuity; or

(2) If service is 10 or more, but less than 20 years, the total credits for widow's annuity from employee contributions and 1/10 of the total credits for widow's annuity from county contributions for each year of service after the first 10 years, including for the widow of a present employee 1/10 of the total credits for widow's prior service annuity from county contributions for each year of service after the first 10 years.

(Source: P.A. 85-964.)

(40 ILCS 5/9-143) (from Ch. 108 1/2, par. 9-143)

Sec. 9-143. Widow's annuity - Present employees and future

entrants - Withdrawal before age 50. The widow of an employee who withdraws after 10 or more years of service before age 50 (age 55 if withdrawal occurs before January 1, 1988), and later attains such age while not in service, shall be entitled after his death to an annuity fixed on the date the employee attained such age.

The widow shall be entitled to the amount provided on a reversionary annuity basis from the following sums accumulated to his credit on the date when the annuity is fixed as follows:

(1) If service is 20 or more years, the total credits for widow's annuity and, in addition, if he was a present employee, the total credits for widow's prior service annuity; or

(2) If service is 10 or more but less than 20 years, the total credits for widow's annuity from employee contributions and 1/10 of the total credits for widow's annuity from county contributions for each year of service after the first 10 years, including, for the widow of a present employee, 1/10 of the total credits for widow's prior service annuity from county contributions for each year of service after the first 10 years. (Source: P.A. 85-964.)

(40 ILCS 5/9-144) (from Ch. 108 1/2, par. 9-144)

Sec. 9-144. Widow's annuities - Present employees and future entrants - Withdrawal and death before age 50. The widow of an employee with 10 or more years of service who withdraws before age 50 (age 55 if withdrawal occurs before January 1, 1988) and who dies while out of service before attaining such age, shall be entitled to an annuity computed on a single life annuity basis at the date of death from the following sum accumulated to his credit:

(1) If service is 20 or more years, the total credits for age and service annuity and widow's annuity, and, in addition, if he was a present employee, the total credits for prior service annuity and widow's prior service annuity; or

(2) If service is 10 or more but less than 20 years, the total credits for age and service annuity and widow's annuity from employee contributions, and, in addition, if he was a present employee, the total credits for prior service annuity and 1/10 of the total credits for age and service annuity and widow's annuity from county contributions for each year of service after the first 10 years, including, for the widow of a present employee, 1/10 of the total credits for prior service and widow's prior service annuity from county contributions for each year of service after the first 10 years.

No county contributions shall be used for a widow's annuity in excess of that which she would receive if the employee had lived until he attained age 50 (age 55 if withdrawal occurs before January 1, 1988) and had not re-entered service, and an

annuity were fixed for her on a reversionary annuity basis as of her age when her husband would have attained age 50 (age 55 if withdrawal occurs before January 1, 1988).
(Source: P.A. 85-964.)

(40 ILCS 5/9-145) (from Ch. 108 1/2, par. 9-145)

Sec. 9-145. Widow's annuities-Re-entry of employee into service. No annuity in excess of that fixed in accordance with Sections 9-141, 9-142 and 9-143 shall be granted to a widow described in those sections unless the employee re-enters service before age 65, in which case the annuity for his wife shall be fixed as of the date he attains age 65 while in service, or when he again withdraws, whichever first occurs.
(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-146) (from Ch. 108 1/2, par. 9-146)

Sec. 9-146. Employee's widow's annuities - No contributions or service credits after fixation. No contributions by the employee or the county for an annuity for the widow of an employee shall be made after the date when her annuity has been fixed. No service of an employee rendered after such date shall be considered for widow's annuity, except as herein otherwise provided.
(Source: P.A. 81-1536.)

(40 ILCS 5/9-146.1) (from Ch. 108 1/2, par. 9-146.1)

Sec. 9-146.1. Minimum annuities for widows. The widow of an employee who retires from service or dies while in the service subsequent to June 11, 1965, who is otherwise eligible for widow's annuity under this Article and for whom the amount of widow's annuity and widow's prior service annuity combined, fixed or provided for such widow under other provisions of this Article 9 is less than the amount hereinafter provided in this Section, shall, from and after the date her otherwise provided annuity would begin, in lieu of such otherwise provided widow's and widow's prior service annuity, be entitled to the following indicated amount of annuity:

(a) The widow of any employee who dies while in the service on or after the date on which he attains the age of 60 or more years with at least 20 years of service, or 10 or more years of service if death occurs on or after attainment of age 65 and on or after January 1, 1982, shall be entitled to an annuity equal to one-half of the amount of annuity which her deceased husband would have been entitled to receive had he withdrawn from the service on the day immediately preceding the date of his death, conditional upon such widow having attained the age of 60 or more years on such date. Such amount of widow's annuity shall

not, however, exceed the sum of \$500 a month if death in service occurs before July 1, 1985.

If such widow of such described employee shall not be 60 or more years of age on such date of death, the amount provided in the immediately preceding paragraph for a widow 60 or more years of age, shall, in the case of such younger widow, be reduced by 1/2 of 1 per cent for each month that her then attained age is less than 60 years; except that such younger widow of an employee who dies while in service on or after July 1, 1985 with at least 30 years of service, shall not be subject to the reduction in widow's annuity because of her age less than 60 on the date of the employee's death.

(b) The widow, of any employee who dies subsequent to the date of his retirement on annuity, and who so retired on or after the date on which he attained the age of 60 or more years with at least 20 years of service, or 10 or more years of service if retirement occurs on or after attainment of age 65 and on or after January 1, 1982, shall be entitled to an annuity equal to one-half of the amount of annuity which her deceased husband received as of the date of his retirement on annuity, conditional upon such widow having attained the age of 60 or more years on the date of her husband's retirement on annuity. Such amount of widow's annuity shall not, however, exceed the sum of \$500 a month if the death occurs before the effective date of this amendatory Act of 1991.

If such widow of such described employee shall not have attained such age of 60 or more years on such date of her husband's retirement on annuity, the amount provided in the immediately preceding paragraph for a widow 60 or more years of age on the date of her husband's retirement on annuity, shall, in the case of such then younger widow, be reduced by 1/2 of 1 per cent for each month that her then attained age was less than 60 years; except that such younger widow of an employee retiring on or after July 1, 1985 with at least 30 years of service, shall not be subject to the reduction in widow's annuity because of her age less than 60 on the date of the employee's retirement.

(c) The foregoing provisions relating to minimum annuities for widows shall not apply to the widow of any former county employee receiving an annuity from the Fund on June 11, 1965, who re-enters service as a county employee, unless such employee renders at least 3 years of additional service after the date of re-entry.

(d) An annuity being paid to a surviving spouse on January 1, 1984 shall be increased by 10% and shall thereafter be paid at the increased rate until the termination of the annuity by death or other cause. The annuity for a qualifying widow shall not exceed \$500 per month.

(e) The widow of any employee who dies while in service on or after July 1, 1985 but prior to January 1, 1988, and the widow of an employee who retires on or after July 1, 1985 but prior to January 1, 1988 with at least 10 years of service, and the widow of an employee who retires on or after January 1, 1984 but prior to July 1, 1985 with at least 30 years of service, shall be entitled to an annuity equal to one-half of the amount of annuity which her deceased husband would have received had he retired immediately prior to his death or one-half the amount of the originally granted retirement annuity, whichever is applicable. Such widow's annuity will be reduced 0.5% for each month that the widow's attained age is less than age 60 on the date of the employee's death in service or retirement if the employee's death in service or retirement is before January 1, 1988; except that such younger widow of an employee with at least 30 years of service shall not be subject to the reduction in widow's annuity because of her age less than 60 on the date of the employee's death in service or retirement.

The widow of an employee who dies in service on or after January 1, 1988, or retires on or after January 1, 1988 with at least 10 years of service, shall be entitled to an annuity equal to 1/2 of the amount of annuity which her deceased husband would have received had he retired immediately prior to his death or 1/2 of the amount of the annuity which her deceased husband received as of the date of his death, whichever is applicable. Such widow's annuity shall be reduced 0.5% for each month that the widow's attained age is less than age 60 on the date of the employee's death if employee's death in service or retirement is after January 1, 1988; except that such younger widow of an employee with at least 30 years of service shall not be subject to the reduction in widow's annuity because of her age on the date of the employee's death.

In lieu of any other annuity provided by this Article, the widow of an employee who dies in service on or after January 1, 1992, or retires on or after January 1, 1992 with at least 10 years of service, shall be entitled to an annuity equal to 1/2 of the amount of annuity which her deceased husband would have received had he retired immediately prior to his death or 1/2 of the amount of the annuity which her deceased husband received as of the date of his death, whichever is applicable. Such widow's annuity shall be reduced 0.5% for each month that the widow's attained age is less than age 55 on the date of the employee's death; except that such younger widow of an employee with at least 30 years of service shall not be subject to the reduction in widow's annuity because of her age on the date of the employee's death.

In lieu of any other annuity provided by this Article, the widow of an employee who dies in service or withdraws from

service on or after January 1, 1992 but before January 1, 1993 at age 55 or over with at least 5 but less than 10 years of service, shall be entitled to an annuity equal to half of the amount of annuity which her deceased husband would have received had he retired immediately prior to his death or half of the amount of the annuity which her deceased husband received as of the date of his death, whichever is applicable. This widow's annuity shall be reduced 0.5% for each month that the widow's attained age is less than 60 on the date of the employee's death.

However, in the case of an employee dying in service, the amount of widow's annuity shall not be less than 10% of the highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal. The maximum amount of annuity under this paragraph shall not be limited to a dollar maximum. The provisions of this paragraph shall not apply to the widow of any former County employee receiving an annuity from the fund who re-enters service as a County employee, unless such employee renders at least 3 years of additional service after the date of re-entry.

(f) An annuity being paid to a surviving spouse on July 1, 1988, shall be increased on that date by 1% for each full year that has elapsed from the date the annuity began.

(g) In lieu of any other annuity provided under this Article, if the deceased employee was receiving a retirement annuity at the time of his death and that death occurs on or after January 1, 1993, the widow's annuity shall be 50% of the deceased employee's retirement annuity at the time of death, reduced by 0.5% for each month that the widow's age on the date of death is less than 55, except that the reduction does not apply if the deceased employee had at least 30 years of service.

(h) In lieu of any other annuity provided under this Article, the widow of an employee who dies in service on or after July 1, 2002 or has at least 10 years of service and dies on or after July 1, 2002 while receiving an annuity shall be entitled to a widow's annuity equal to 65% of the amount of annuity which her deceased husband would have received had he retired immediately prior to his death or 65% of the amount of the annuity which her deceased husband received as of the date of his death, whichever is applicable. This widow's annuity shall be reduced by 0.5% for each month that the widow's age on the date of the employee's death is less than 55, unless the deceased husband had at least 30 years of service.

(Source: P.A. 92-599, eff. 6-28-02.)

(40 ILCS 5/9-146.2)

Sec. 9-146.2. Automatic annual increase in widow's annuity.

(a) Every widow's annuity, other than a term annuity, shall

be increased on January 1, 1998 or the January 1 occurring on or immediately after the first anniversary of the deceased employee's death, whichever occurs later, by an amount equal to 3% of the amount of the annuity.

On each January 1 after the date of the initial increase under this Section, the widow's annuity shall be increased by an amount equal to 3% of the amount of the widow's annuity payable at the time of the increase, including any increases previously granted under this Article.

(b) Limitations on the maximum amount of widow's annuity imposed under Section 9-150 do not apply to the annual increases provided under this Section.

(c) The increases provided under this Section also apply to compensation annuities and supplemental annuities payable under Section 9-147. The increases provided under this Section do not apply to term annuities.

(Source: P.A. 90-32, eff. 6-27-97.)

(40 ILCS 5/9-147) (from Ch. 108 1/2, par. 9-147)

Sec. 9-147. Compensation annuity and supplemental annuity.

When annuity otherwise provided in this Article for the widow of an employee whose death results from injury incurred in the performance of an act of duty is less than 60% of his salary in effect at the time of the injury, "Compensation Annuity" equal to the difference between such annuity and 60% of such salary, shall be payable to her until the date when the employee, if alive, would have attained age 65. The county shall contribute to the fund each year the amount required for all compensation annuities payable during any such year.

Thereafter, the widow shall be entitled to "Supplemental Annuity" equal to the differences between the annuity otherwise provided her in this Article and the annuity to which she would be entitled if the employee had lived and continued in service at the salary in effect at the date of the injury until he attained age 65, and based upon her age as it would be on the date he would have attained 65. Supplemental Annuity shall be provided from county contributions after the date of the employee's death, of such equal amounts annually which when improved by interest at the effective rate, will be sufficient, at the time payment of Compensation Annuity to the widow ceases to provide Supplemental Annuity, as stated, for the widow throughout her life thereafter.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-148) (from Ch. 108 1/2, par. 9-148)

Sec. 9-148. Widows or wives not entitled to annuity. Except as provided in Section 9-148.1, the following widows or wives of

employees have no right to annuity from the fund:

(a) The widow or wife, married subsequent to the effective date, of an employee who dies in service if she was not married to him before he attained age 65;

(b) The widow or wife, married subsequent to the effective date, of an employee who withdraws from service whether or not he enters upon annuity, and who dies while out of service, if she was not his wife while he was in service and before he attained age 65;

(c) The widow or wife of an employee with 10 or more years of service whose death occurs out of and after he has withdrawn from service, and who has received a refund of contributions for annuity purposes;

(d) The widow or wife of an employee with less than 10 years of service who dies out of service after he has withdrawn from service before he attained age 60.

(Source: P.A. 92-599, eff. 6-28-02.)

(40 ILCS 5/9-148.1)

Sec. 9-148.1. Widow's annuity for widow married to member for at least one year. Notwithstanding Section 9-148, if a member was not married at the time of retirement but married after retirement, that member's widow shall be entitled to a widow's annuity if (1) the widow was married to the member for at least the last year prior to the member's death; (2) the widow is otherwise eligible for a widow's annuity; and (3) the widow repays to the Fund (i) an amount equal to the amount of any refund paid to the member at the time of retirement pursuant to Section 9-165 plus (ii) interest thereon from the date of the refund until the time of repayment at the rate of 6% per year.

(Source: P.A. 92-599, eff. 6-28-02.)

(40 ILCS 5/9-149) (from Ch. 108 1/2, par. 9-149)

Sec. 9-149. Widow's remarriage to terminate annuity. A widow's annuity shall terminate when she remarries if the marriage takes place before the date 60 days after the effective date of this amendatory Act of the 91st General Assembly. If a widow remarries 60 or more days after the effective date of this amendatory Act of the 91st General Assembly, the widow's annuity shall continue without interruption.

When a widow dies, if she has not received, in the form of an annuity, an amount equal to the total sums accumulated and credited from the employee's contributions and applied for the widow's annuity, the difference between such accumulated annuity credits and the amount received by her in annuity payments shall be refunded to her; provided that if a reversionary annuity is payable to her or to any other person designated by the

employee, this amount shall not be refunded, but the reversionary annuity shall be payable.
(Source: P.A. 91-887, eff. 7-6-00.)

(40 ILCS 5/9-149.1) (from Ch. 108 1/2, par. 9-149.1)

Sec. 9-149.1. Annuities to survivors of female employees.

All provisions of this Article relating to annuities or benefits to a widow, minor children or other survivors of a male employee shall apply with equal force to a surviving spouse, children or other eligible survivors of a female employee, including credits for the several annuity purposes, refunds and death benefits, without any modification or distinction whatsoever.

(Source: P.A. 78-1129.)

(40 ILCS 5/9-150) (from Ch. 108 1/2, par. 9-150)

Sec. 9-150. Maximum annuities.

(1) The annuities to an employee and his widow are subject to the following limitations:

(a) No age and service annuity or age and service and prior service annuity combined in excess of 60% of highest salary of an employee and no minimum annuity in excess of the annuity provided in Section 9-134 or set forth as a maximum in any other Section of this Code relating to minimum annuities for County employees included under Article 9 of this Code shall be payable to any employee excepting to the extent that the annuity may exceed such per cent or amount under Section 9-133 and 9-133.1, providing for automatic increases after retirement.

(b) No annuity in excess of 60% of such highest salary shall be payable to a widow if death of an employee results from injury incurred in the performance of an act of duty; provided, the annuity for a widow, or a Widow's Annuity plus Compensation Annuity shall not exceed \$400, or in the case of a qualifying widow whose husband retires, or dies while in service, on or after January 1, 1982, and dies before the effective date of this amendatory Act of 1991, \$500 per month. The annuity for a widow, or a Widow's Annuity plus Compensation Annuity, shall not be limited to a dollar maximum in the case of a qualifying widow whose husband dies while in service or retirement on or after the effective date of this amendatory Act of 1991.

(c) No annuity in excess of 50% of such highest salary shall be payable to a widow in the case of death resulting from any cause other than injury incurred in the performance of an act of duty; provided, the annuity for a widow, or a Widow's Annuity plus Supplemental Annuity shall

not exceed \$400, or in the case of a qualifying widow whose husband retires, or dies while in service, on or after January 1, 1982, and dies before the effective date of this amendatory Act of 1991, \$500 per month. The annuity for a widow, or a Widow's Annuity plus Supplemental Annuity, shall not be limited to a dollar maximum in the case of a qualifying widow whose husband dies while in service or retirement on or after the effective date of this amendatory Act of 1991.

(2) Until July 1, 1985, if at the death of an employee prior to age 65 the credit for widow's annuity exceeds that necessary to provide the maximum annuity prescribed in this section, all employee contributions for annuity purposes, for service after the date on which the accumulated sums to the credit of such employee for annuity purposes would first have provided such widow with such amount of annuity if such annuity were computed on the basis of the combined annuity mortality table with interest at 3% per annum with ages at date of determination taken as specified in this article shall be refunded to the widow, with interest at the effective rate.

If the employee was credited with county contributions for any period of service during which he was not required to make a contribution or made a contribution of less than 3 1/4% of salary, the refund shall be reduced by the equivalent of the contributions he would have made during such period, less any amount he contributed, had the rate of employee contributions in effect on the effective date been in force throughout his entire service, prior to the effective date, with interest at the effective rate; provided, that if the employee was credited with county contributions for widow's annuity for any service prior to the effective date, any amount so refundable shall be further reduced by the equivalent of what he would have contributed had he made contributions for widow's annuity at the rate of 1% throughout his entire service, prior to such effective date, with interest at the effective rate.

(3) Notwithstanding any other provision of this Article, any benefit payable under this Article which would otherwise exceed the maximum limitations on benefits provided by "qualified plans" as set forth in Section 415 of the federal Internal Revenue Code of 1986, as now or hereafter amended, or any successor thereto, shall be paid only in accordance with Section 1-116 of this Code.

(Source: P.A. 87-794.)

(40 ILCS 5/9-150.1) (from Ch. 108 1/2, par. 9-150.1)

Sec. 9-150.1. The provisions of parts (1) (b) and (c) of Section 9-150, of this Article 9, increasing the maximum widow's annuity from \$300 to \$400 a month, shall be effective July 1,

1971, and apply in the case of every qualifying widow whose husband dies while in service on or after July 1, 1971 or withdraws and enters on annuity on or after July 1, 1971.
(Source: P.A. 77-2146.)

(40 ILCS 5/9-151) (from Ch. 108 1/2, par. 9-151)

Sec. 9-151. Mortality tables and interest rates. (a) Any single life annuity fixed or granted to any employee who was a participant on or before January 1, 1954, or any reversionary or single life annuity, fixed for or granted to a wife or widow shall be computed, in the case of the employee as of his attained age when the annuity is fixed or granted, and in the case of the wife or widow, as of employee's age and that of his wife or widow on the date her annuity is fixed or granted, provided that if the wife or widow is older than 5 years the junior of her husband her age shall be assumed 5 years less than his. The American Experience Table of Mortality with interest at 4% per annum shall be used for the computation of the annuity values in this paragraph.

(b) Until the effective date of this amendatory Act of 1985, any single life annuity fixed or granted to any employee who becomes a participant for the first time after January 1, 1954, or any reversionary or single life annuity, fixed or granted to the wife or widow shall be computed, in the case of the employee as of his attained age when the annuity is fixed or granted, and in the case of the wife or widow her age shall be taken as 4 years younger than her actual age, or 4 years younger than the age of her husband, whichever will produce the lower age, as of the date the employee's, or the wife's or widow's annuity is fixed or granted. The Combined Annuity Mortality Table for Male Lives with interest at 3% per annum shall be used for the computation of the single life employee annuity values in this paragraph. Such table shall also be used for the computation of single life widow annuity values and for the computation of the reversionary annuities specified in this paragraph with the female life taken as 4 years less than the male life.

On or after the effective date of this amendatory Act of 1985, any single life annuity fixed or granted to any employee who becomes a participant for the first time after January 1, 1954, or any reversionary or single life annuity fixed or granted to a wife or widow, shall be computed, in the case of an employee as of his attained age when the annuity is fixed or granted, and in the case of the wife or widow her age shall be taken as the lower of her actual age or the age of her husband as of the date the employee's or wife's or widow's annuity is fixed or granted. The Combined Annuity Mortality Table for Male Lives with interest at 3% per annum shall be used for the computation of the single life employee and widow annuity values

in this paragraph. Such table shall also be used for the computation of the reversionary annuity values specified in this paragraph with the employee life taken as 4 years less than the male life and the spouse life taken as the male life. Any increased costs of a local government attributable to this amendatory Act of 1985 are not reimbursable by the State.

(c) All sums credited to any employee for annuity purposes when he withdraws from service before age 55 shall be improved with interest at the effective rate thereafter while he is not in service and has not entered upon annuity until he attains age 65.

(d) The amount of widow's annuity or widow's prior service annuity which shall be fixed for the wife of an employee who is alive shall be calculated as a reversionary annuity derived from the total accumulated sum to the employee's credit for widow's annuity and widow's prior service annuity on the date the annuity is fixed. An annuity for a widow shall be computed as of her age at the date of fixation, subject to the foregoing provisions of this Section.

(Source: P.A. 84-306.)

(40 ILCS 5/9-152) (from Ch. 108 1/2, par. 9-152)

Sec. 9-152. Computation of interest. For the computation of interest upon any sum contributed by an employee into any county pension fund or into this fund, it shall be assumed that the sum was contributed on the last day of the calendar month in which such contribution was made.

(Source: P.A. 81-1536.)

(40 ILCS 5/9-153) (from Ch. 108 1/2, par. 9-153)

Sec. 9-153. Term annuities - How computed. In any case in which an employee's credit for an annuity for himself or his widow is insufficient - at the time the annuity is fixed, - to provide an immediate life annuity of \$150 a month for the employee or his widow, a term annuity of equal actuarial value of \$150 a month shall be paid for such time as such payments can be made from such credits for the respective annuities.

(Source: P.A. 83-1362.)

(40 ILCS 5/9-154) (from Ch. 108 1/2, par. 9-154)

Sec. 9-154. Child's annuity. A "Child's Annuity" shall be payable monthly after the death of an employee parent to the unmarried child until the child's attainment of age 18, under the following conditions, if the child was born before the employee attained age 65, and before he withdrew from service:

(a) Upon death resulting from injury incurred in the performance of an act of duty;

(b) Upon death in service from any cause other than injury incurred in the performance of an act of duty, if the employee has at least 4 years of service after the date of his original entry into service, and at least 2 years after the date of his latest re-entry;

(c) Upon death of an employee who withdraws from service after age 50 (age 55 if withdrawal was before January 1, 1988), and who has entered upon or is eligible for annuity.

The first payment shall become due and payable one month after the date of death.

(Source: P.A. 85-964.)

(40 ILCS 5/9-155) (from Ch. 108 1/2, par. 9-155)

Sec. 9-155. Amount of child's annuity. A child's annuity shall be \$140 per month for each child, and shall be subject to the following limitations:

(1) If the combined annuities for the widow and children of an employee whose death resulted from injury incurred in the performance of duty, or for the children where a widow does not exist, exceed 70% of the employee's final monthly salary, the annuity for each child shall be reduced pro rata so that the combined annuities for the family shall not exceed such limitation.

(2) For the family of an employee whose death is the result of any cause other than injury incurred in the performance of duty, in which the combined annuities for the family exceed 60% of the employee's final monthly salary, the annuity for each child shall be reduced pro rata so that the combined annuities for the family shall not exceed such limitation.

A child's annuity shall be paid to the parent who is providing for the child, unless another person has been appointed the child's legal guardian.

Beginning with any child's annuity payment made on or after July 1, 1988, all child's annuities otherwise payable at the rate of \$140 per month shall be increased to 10% of the employee's salary at date of death if greater than \$140, subject to the limitation that the combined annuities for a family may not exceed the applicable amount hereinbefore in this Section stated.

(Source: P.A. 86-272.)

(40 ILCS 5/9-156) (from Ch. 108 1/2, par. 9-156)

Sec. 9-156. Duty disability benefit - Child's disability benefit. An employee who becomes disabled after the effective date while under age 65 and prior to January 1, 1979, or while under age 70 after January 1, 1979 and prior to January 1, 1987, as the result of injury incurred - on or after the date he has

been included under this Article - in the performance of an act or acts of duty shall have a right to receive duty disability benefit, during any period of such disability for which he receives no salary. Any employee who becomes disabled after January 1, 1987, as the result of injury incurred on or after the date he has been included under the Article and in the performance of an act or acts of duty, shall have a right to receive a duty disability benefit during any period of such disability for which he receives no salary. The benefit shall be 75% of salary at date of injury; provided, that if disability, in any measure, has resulted from any physical defect or disease which existed at the time such injury was sustained, the duty disability benefit shall be 50% of salary at date of such injury.

The employee shall also have a right to receive child's disability benefit of \$10 a month on account of each child less than age 18. Child's disability benefits shall not exceed 15% of the salary as aforesaid.

These benefits shall not be allowed unless application therefor is made while the disability exists; except that this limitation does not apply if the board finds that there was reasonable cause for delay in filing the application while the disability existed. This amendatory Act of the 95th General Assembly is intended to be a restatement and clarification of existing law and does not imply that application for a duty disability benefit made after the disability had ceased, without a finding of reasonable cause, was previously allowed under this Article.

The first payment of duty disability or child's disability benefit shall be made not later than one month after such benefit is granted and each subsequent payment shall be made not later than one month after the last preceding payment.

Duty disability benefit is payable during disability until the employee attains age 65 if the disability commences prior to January 1, 1979. If the disability commences on or after January 1, 1979, the benefit prescribed herein shall be payable during disability until the employee attains age 65 for disability commencing prior to age 60, or for a period of 5 years or until attainment of age 70, whichever occurs first, for disability commencing at age 60 or older and on or after January 1, 1979 but prior to January 1, 1987. If the disability commences on or after January 1, 1987, the benefit prescribed herein shall be payable during disability for a period of 5 years for disability commencing at age 60 or older. In either case, child's disability benefit shall be paid to the employee parent of any unmarried child less than age 18, during such time until the child marries or attains age 18. The employee shall thereafter receive such annuity as is otherwise provided under this

Article.

Any employee whose duty disability benefit was terminated on or after January 1, 1987 by reason of his attainment of age 70, and who continues to be disabled after age 70, may elect before March 31, 1988, to have such benefits resumed beginning at the time of such termination and continuing until termination is required under this Section as amended by this amendatory Act of 1987. The amount payable to any employee for such resumed benefit for any period shall be reduced by the amount of any retirement annuity paid to such employee under this Article for the same period of time or by any refund paid in lieu of annuity.

(Source: P.A. 95-1036, eff. 2-17-09.)

(40 ILCS 5/9-157) (from Ch. 108 1/2, par. 9-157)

Sec. 9-157. Ordinary disability benefit. An employee while under age 65 and prior to January 1, 1979, or while under age 70 and after January 1, 1979, but prior to January 1, 1987, and regardless of age on or after January 1, 1987, who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof.

No employee who becomes disabled and whose disability commences during any period of absence from duty without pay may receive ordinary disability benefit until he recovers from such disability and performs the duties of his position in the service for at least 15 consecutive days, Sundays and holidays excepted, after his recovery from such disability.

The benefit shall not be allowed unless application therefor is made while the disability exists, nor for any period of disability before 30 days before the application for such benefit is made. The foregoing limitations do not apply if the board finds from satisfactory evidence presented to it that there was reasonable cause for delay in filing such application within such periods of time.

The first payment shall be made not later than one month after the benefit is granted and each subsequent payment shall be made not later than one month after the last preceding payment.

The disability benefit prescribed herein shall cease when the first of the following dates shall occur and the employee, if still disabled, shall thereafter be entitled to such annuity as is otherwise provided in this Article:

(a) the date disability ceases.

(b) the date the disabled employee attains age 65 for disability commencing prior to January 1, 1979.

(c) the date the disabled employee attains 65 for disability commencing prior to attainment of age 60 in the service and after January 1, 1979.

(d) the date the disabled employee attains the age of 70 for disability commencing after attainment of age 60 in the service and after January 1, 1979.

(e) the date the payments of the benefit shall exceed in the aggregate, throughout the employee's service, a period equal to 1/4 of the total service rendered prior to the date of disability but in no event more than 5 years. In computing such total service any period during which the employee received ordinary disability benefit and any period of absence from duty other than paid vacation shall be excluded.

Any employee whose duty disability benefit was terminated on or after January 1, 1979 by reason of his attainment of age 65 and who continues to be disabled after age 65 may elect before July 1, 1986 to have such benefits resumed beginning at the time of such termination and continuing until termination is required under this Section as amended by this amendatory Act of 1985. The amount payable to any employee for such resumed benefit for any period shall be reduced by the amount of any retirement annuity paid to such employee under this Article for the same period of time or by any refund paid in lieu of annuity.

Any employee whose disability benefit was terminated on or after January 1, 1987 by reason of his attainment of age 70, and who continues to be disabled after age 70, may elect before March 31, 1988, to have such benefits resumed beginning at the time of such termination and continuing until termination is required under this Section as amended by this amendatory Act of 1987. The amount payable to any employee for such resumed benefit for any period shall be reduced by the amount of any retirement annuity paid to such employee under this Article for the same period of time or by any refund paid in lieu of annuity.

Ordinary disability benefit shall be 50% of the employee's salary at the date of disability. Instead of all amounts ordinarily contributed by an employee and by the county for age and service annuity and widow's annuity based on the salary at date of disability, the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is deemed for annuity and refund purposes as amounts contributed by him. The county shall also contribute 1/2 of 1% salary deductions required as a contribution from the employee under Section 9-133.

An employee who has withdrawn from service or was laid off for any reason, who is absent from service thereafter for 60 days or more who re-enters the service subsequent to such absence is not entitled to ordinary disability benefit unless he

renders at least 6 months of service subsequent to the date of such last re-entry.

(Source: P.A. 96-1466, eff. 8-20-10.)

(40 ILCS 5/9-158) (from Ch. 108 1/2, par. 9-158)

(Text of Section before amendment by P.A. 102-210)

Sec. 9-158. Proof of disability, duty and ordinary. Proof of duty or ordinary disability shall be furnished to the board by at least one licensed and practicing physician appointed by the board, except that this requirement may be waived by the board for proof of duty disability if the employee has been compensated by the county for such disability or specific loss under the Workers' Compensation Act or Workers' Occupational Diseases Act. The physician requirement may also be waived by the board for ordinary disability maternity claims of up to 8 weeks. With respect to duty disability, satisfactory proof must be provided to the board that the final adjudication of the claim required under subsection (d) of Section 9-159 established that the disability or death resulted from an injury incurred in the performance of an act or acts of duty. The board may require other evidence of disability. Each disabled employee who receives duty or ordinary disability benefit shall be examined at least once a year by one or more licensed and practicing physicians appointed by the board. When the disability ceases, the board shall discontinue payment of the benefit.

(Source: P.A. 99-578, eff. 7-15-16.)

(Text of Section after amendment by P.A. 102-210)

Sec. 9-158. Proof of disability, duty and ordinary. Proof of duty or ordinary disability shall be furnished to the board by at least one licensed and practicing physician appointed by or acceptable to the board, except that this requirement may be waived by the board for proof of duty disability if the employee has been compensated by the county for such disability or specific loss under the Workers' Compensation Act or Workers' Occupational Diseases Act. The physician requirement may also be waived by the board for ordinary disability maternity claims of up to 8 weeks. With respect to duty disability, satisfactory proof must be provided to the board that the final adjudication of the claim required under subsection (d) of Section 9-159 established that the disability or death resulted from an injury incurred in the performance of an act or acts of duty. The board may require other evidence of disability. Each disabled employee who receives duty or ordinary disability benefit shall be examined at least once a year or a longer period of time as determined by the board, by one or more licensed and practicing physicians appointed by the board. When the disability ceases,

the board shall discontinue payment of the benefit.
(Source: P.A. 102-210, eff. 1-1-22.)

(40 ILCS 5/9-159) (from Ch. 108 1/2, par. 9-159)
Sec. 9-159. When disability benefit not payable.

(a) If an employee receiving duty disability or ordinary disability benefit refuses to submit to examination by a physician appointed by the board, he shall have no further right to receive the benefit.

(b) Disability benefit shall not be paid for any time for which the employee receives any part of his salary, or while employed by any public body supported in whole or in part by taxation.

(c) If an employee who shall be disabled, or his widow or children receive any compensation or payment from the county for specific loss, disability or death under the Workers' Compensation Act or Workers' Occupational Diseases Act, the disability benefit or any annuity for him or his widow or children payable as the result of such specific loss, disability or death shall be reduced by any amount so received or recoverable. If the amount received as such compensation or payment exceeds such disability benefit or other annuity payable as the result of such specific loss, disability or death, no payment of disability benefit or other annuity shall be made until the accumulative amounts thereof equals the amount of such compensation or payment. In such calculation no interest shall be considered. In adjusting the amount of any annuity in relation to compensation received or recoverable during any period of time, the annuity to the widow shall be first reduced.

If any employee, or widow shall be denied compensation by such county under the aforesaid Acts, or if such county shall fail to act, such denial or failure to act shall not be considered final until the claim has been adjudicated by the Illinois Workers' Compensation Commission.

(d) Before any action may be taken by the board on an application for duty disability benefit or widow's compensation or supplemental benefit, other than rejection of any such application that is otherwise incomplete or untimely, the related applicant must file a timely claim under the Workers' Compensation Act or the Workers' Occupational Diseases Act, as applicable, to establish that the disability or death resulted from an injury incurred in the performance of an act or acts of duty, and the applicant must receive compensation or payment from the claim or the claim must otherwise be finally adjudicated.

(Source: P.A. 95-1036, eff. 2-17-09.)

(40 ILCS 5/9-160) (from Ch. 108 1/2, par. 9-160)

Sec. 9-160. Annuity after withdrawal while disabled. An employee whose disability continues after he has received ordinary disability benefit for the maximum period of time prescribed by this Article, and who withdraws before age 60 while still so disabled, is entitled to receive the annuity provided from the total sum accumulated to his credit from employee contributions and county contributions to be computed as of his age on the date of withdrawal.

The annuity to which his wife shall be entitled upon his death, shall be fixed on the date of his withdrawal. It shall be provided on a reversionary annuity basis from the total sum accumulated to his credit for widow's annuity on the date of such withdrawal.

Upon the death of any such employee while on annuity, if his service was at least 4 years after the date of his original entry, and at least 2 years after the date of his latest re-entry, his unmarried child or children under age 18 shall be entitled to annuity specified in this Article for children of an employee who retires after age 50 (age 55 for withdrawal before January 1, 1988), subject to prescribed limitations on total payments to a family of an employee.

(Source: P.A. 85-964.)

(40 ILCS 5/9-161) (from Ch. 108 1/2, par. 9-161)

Sec. 9-161. Re-entry into service. (a) When an employee who has withdrawn from service after the effective date re-enters service before age 65, any annuity previously granted and any annuity fixed for his wife shall be cancelled. The employee shall be credited for annuity purposes with the actuarial value of annuities equal to those cancelled as of their ages on the date of re-entry; provided, the maximum age of the wife for this purpose shall be as provided in Section 9-151 of this Article. The sums so credited shall provide for annuities to be fixed and granted in the future. Contributions by the employee and the county for the purposes of this Article shall be made and when the proper time arrives, as provided in this Article, new annuities based upon the total sums accumulated to his credit for annuity purposes and the entire term of his service shall be fixed for the employee and his wife.

If the employee's wife has died before he re-entered service, no part of any credits for widow's or widow's prior service annuity at the time annuity for his wife was fixed shall be credited upon re-entry into service, and no such sums shall thereafter be used to provide such annuity.

(b) When an employee re-enters service after age 65, payments on account of any annuity previously granted shall be

suspended during the time thereafter that he is in service, and when he again withdraws annuity payments shall be resumed. If the employee dies in service, his widow shall receive the annuity previously fixed for her.
(Source: P.A. 81-1536.)

(40 ILCS 5/9-162) (from Ch. 108 1/2, par. 9-162)

Sec. 9-162. Re-entry into service - Prior employee. An employee other than a present employee described in subdivision (c) of Section 9-109 who was not in the service of such county or of the board on the day prior to the effective date, and who was in service prior to that date and who re-enters the service after that date and before age 65, shall not be credited for prior service annuity or widow's prior service annuity on account of service prior to the effective date. The period of service, prior to the effective date, shall, however, be included in computing service for age and service annuity, widow's annuity and ordinary disability purposes.

Contributions by the employee and county contributions for age and service annuity and widow's annuity shall be made until such employee attains age 65.

Any such employee shall have a right to receive age and service annuity, from the date of withdrawal from service, as of his age on such date, provided from the total sum accumulated to his credit for such purposes on such date.

The amount of annuity for the wife or widow of any such employee, from the date of the death of such employee, shall be fixed in accordance with the provisions of this Article relating to annuities for widows of future entrants.

The foregoing provisions of this section shall apply to any employee who was not in service of such county or of the board on the day prior to the effective date, unless such employee qualifies as a present employee as described in subdivision (c) of Section 9-109, in which event he shall be credited for prior service annuity and widow's prior service annuity with accumulated sums computed as prescribed in this Article. The period of service rendered by such employee prior to the day before the effective date shall be credited in addition to the periods of service otherwise credited to such employee.

(Source: P.A. 81-1536.)

(40 ILCS 5/9-163) (from Ch. 108 1/2, par. 9-163)

Sec. 9-163. Restoration of rights. An employee who has withdrawn as a refund the amounts credited for annuity purposes, and who re-enters service and serves for periods comprising at least 2 years after the date of the last refund paid to him, may have his annuity rights restored by making application to the

board in writing for the privilege of reinstating such rights and by compliance with the following provisions:

(a) The employee shall repay in full to the fund while in service all refunds received, together with interest at the effective rate from the application date of such refund or refunds to the date of repayment.

(b) If payment is not made in a single sum, the repayment may be made in installments by deductions from salary or otherwise in such amounts as the employee may elect to pay, with interest at the effective rate accruing on unpaid balances.

(c) If the employee withdraws from service or dies in service before full repayment is made, or during the required return to service, the amounts repaid, including interest repaid but without further interest, shall be refunded in accordance with the refund provisions of this Article.

For an employee who applies to the Fund to reinstate credit and repay a refund between January 1, 1993 and March 1, 1993, the 2 year minimum period of subsequent service required under item (a) shall be instead a period of 6 months.

A person who establishes service credit under Section 9-121.16 may, at the same time, reinstate credit in this Fund and repay a refund without a return to service, notwithstanding the other provisions of this Section.

(Source: P.A. 92-599, eff. 6-28-02.)

(40 ILCS 5/9-164) (from Ch. 108 1/2, par. 9-164)

Sec. 9-164. Refunds - Withdrawal before age 55 or with less than 10 years of service.

(1) An employee, without regard to length of service, who withdraws before age 55 (age 62 for an employee who first becomes a member on or after January 1, 2011), and any employee with less than 10 years of service who withdraws before age 60, and any employee who first becomes a member on or after January 1, 2011 who withdraws with less than 10 years of service, shall be entitled to a refund of the total sums accumulated to his credit as of date of withdrawal for age and service annuity and widow's annuity resulting from amounts contributed by him or by the county in lieu of employee contributions during duty disability. If he is a present employee he shall also be entitled to a refund of the total sum accumulated from any sums contributed by him and applied to any county pension fund superseded by this fund. An employee withdrawing on or after January 1, 1984 may receive a refund only after he has been off the payroll for at least 30 days during which time he has received no salary.

(2) Upon receipt of the refund, the employee surrenders and forfeits all rights to any annuity or other benefits for himself and for any other persons who might have benefited through him; provided that he may have any such period of service counted in computing the term of his service - for age and service annuity purposes only - if he becomes an employee before age 65, excepting as limited by the provisions of this Article relating to the basis of computing the term of service.

(3) An employee who does not receive a refund shall have all amounts to his credit for annuity purposes on the date of his withdrawal improved by interest only until he becomes 65 while out of service at the effective rate for his benefit and the benefit of any person who may have any right to annuity through him if he re-enters service and attains a right to annuity.

(4) Any such employee shall retain such right to a refund of such amounts when he shall apply for same until he re-enters the service or until the amount of annuity shall have been fixed as provided in this Article. Thereafter, no such right shall exist in the case of any such employee.

(Source: P.A. 96-1490, eff. 1-1-11.)

(40 ILCS 5/9-165) (from Ch. 108 1/2, par. 9-165)

Sec. 9-165. Refund of widow's annuity deductions. If a male employee is (1) unmarried when he attains age 65 or (2) is married at age 65 and subsequently becomes a widower while still in service, or (3) unmarried upon withdrawal before age 65 and enters upon annuity, the sum accumulated from employee contributions for widow's annuity shall be refunded to him.

(Source: P.A. 81-1536.)

(40 ILCS 5/9-166) (from Ch. 108 1/2, par. 9-166)

Sec. 9-166. Refunds - when paid to beneficiary, children or estate. Whenever the total amount accumulated to the account of a deceased employee from employee contributions for annuity purposes, and from employee contributions applied to any county pension fund superseded by this fund, have not been paid to him, and in the case of a married male employee to the employee and his widow together, in form of annuity or refund before the death of the last of such persons, a refund shall be payable as follows:

An amount equal to the excess of such amounts over the amounts paid on any annuity or annuities or refund, without interest upon either of such amounts, shall be refunded to a beneficiary theretofore designated by the employee in writing, signed by him, and filed with the board before the employee's death.

If there is no designated beneficiary or the beneficiary

does not survive the employee, the amount shall be refunded to the employee's children, in equal parts with the children of a deceased child taking the share of their parent. If there is no designated beneficiary or children, the refund shall be paid to the administrator or executor of the employee's estate.

If an administrator or executor of the estate has not been appointed within 90 days from the date the refund became payable the refund may be applied in the discretion of the board toward the payment of the employee's burial expenses. Any remaining balance shall be paid to the heirs of the employee according to the law of descent and distribution of this state but assuming for the purpose of such payment of refund and determination of heirs that the deceased male employee left no widow surviving in those cases where a widow eligible for widow's annuity as his widow survived him and subsequently died; provided,

(a) that if any child or children of the employee are less than age 18, such part or all of any such amount necessary to pay annuities to them shall not be refunded as hereinbefore stated; and provided further,

(b) that if a reversionary annuity becomes payable as provided in Section 9-135 such refund shall not be paid until the death of the reversionary annuitant, and the refund otherwise payable under this section shall then first further be reduced by the total amount of the reversionary annuity paid.

(Source: P.A. 99-578, eff. 7-15-16.)

(40 ILCS 5/9-167) (from Ch. 108 1/2, par. 9-167)

Sec. 9-167. Refund - In lieu of annuity. In lieu of an annuity, an employee who withdraws after age 60, having annuity rights based on a credit of not more than 10 years of service, or an employee who withdraws and whose annuity would amount to less than \$150 a month for life, or a former employee who is receiving an annuity from the Fund of less than \$150 per month, regardless of his date of withdrawal from service, may elect to receive a refund of the total sum accumulated to his credit from employee contributions for annuity purposes, minus any amounts previously paid to him by the Fund.

The widow of any employee, eligible for annuity upon the death of her husband, whose annuity would amount to less than \$150 a month for life, and any widow receiving an annuity of less than \$150 per month, may, in lieu of a widow's annuity, elect to receive a refund of the accumulated contributions for annuity purposes, based on the amounts contributed by her deceased employee husband, but reduced by any amounts theretofore paid to either the widow or the employee in the form of an annuity or refund out of such accumulated contributions.

Accumulated contributions shall mean the amounts including

interest credited thereon contributed by the employee for age and service and widow's annuity to the date of his withdrawal or death, whichever first occurs, including the accumulations from any amounts contributed for him as salary deductions while receiving duty disability benefits, and if not otherwise included any accumulations from sums contributed by him and applied to any pension fund superseded by this fund, and interest credited thereon in accordance with the other provisions of this Article.

The acceptance of such refund in lieu of widow's annuity, on the part of a widow, shall not deprive a child or children of the right to receive a child's annuity as provided for in Sections 9-154 and 9-155 of this Article, and neither shall the payment of child's annuity in the case of such refund to a widow reduce the amount herein set forth as refundable to such widow electing a refund in lieu of widow's annuity.

(Source: P.A. 90-655, eff. 7-30-98.)

(40 ILCS 5/9-168)

Sec. 9-168. (Repealed).

(Source: Laws 1963, p. 161. Repealed by P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-169) (from Ch. 108 1/2, par. 9-169)

Sec. 9-169. Financing - Tax levy.

(a) The county board shall levy a tax annually upon all taxable property in the county at the rate that will produce a sum which, when added to the amounts deducted from the salaries of the employees or otherwise contributed by them is sufficient for the requirements of this Article.

For the years before 1962 the tax rate shall be as provided in "The 1925 Act". For the years 1962 and 1963 the tax rate shall be not more than .0200 per cent; for the years 1964 and 1965 the tax rate shall be not more than .0202 per cent; for the years 1966 and 1967 the tax rate shall be not more than .0207 per cent; for the year 1968 the tax rate shall be not more than .0220 per cent; for the year 1969 the tax rate shall be not more than .0233 per cent; for the year 1970 the tax rate shall be not more than .0255 per cent; for the year 1971 the tax rate shall be not more than .0268 per cent of the value, as equalized or assessed by the Department of Revenue upon all taxable property in the county. Beginning with the year 1972 and for each year thereafter the county shall levy a tax annually at a rate on the dollar of the value, as equalized or assessed by the Department of Revenue of all taxable property within the county that will produce, when extended, not to exceed an amount equal to the total amount of contributions made by the employees to the fund in the calendar year 2 years prior to the year for which the

annual applicable tax is levied multiplied by .8 for the years 1972 through 1976; by .8 for the year 1977; by .87 for the year 1978; by .94 for the year 1979; by 1.02 for the year 1980 and by 1.10 for the year 1981 and by 1.18 for the year 1982 and by 1.36 for the year 1983 and by 1.54 for the year 1984 and for each year thereafter.

This tax shall be levied and collected in like manner with the general taxes of the county, and shall be in addition to all other taxes which the county is authorized to levy upon the aggregate valuation of all taxable property within the county and shall be exclusive of and in addition to the amount of tax the county is authorized to levy for general purposes under any laws which may limit the amount of tax which the county may levy for general purposes. The county clerk, in reducing tax levies under any Act concerning the levy and extension of taxes, shall not consider this tax as a part of the general tax levy for county purposes, and shall not include it within any limitation of the per cent of the assessed valuation upon which taxes are required to be extended for the county. It is lawful to extend this tax in addition to the general county rate fixed by statute, without being authorized as additional by a vote of the people of the county.

Revenues derived from this tax shall be paid to the treasurer of the county and held by him for the benefit of the fund.

If the payments on account of taxes are insufficient during any year to meet the requirements of this Article, the county may issue tax anticipation warrants against the current tax levy.

(b) By January 10, annually, the board shall notify the county board of the requirement of this Article that this tax shall be levied. The board shall make an annual determination of the required county contributions, and shall certify the results thereof to the county board.

(c) The various sums to be contributed by the county board and allocated for the purposes of this Article and any interest to be contributed by the county shall be taken from the revenue derived from this tax and no money of the county derived from any source other than the levy and collection of this tax or the sale of tax anticipation warrants, except state or federal funds contributed for annuity and benefit purposes for employees of a county department of public aid under "The Illinois Public Aid Code", approved April 11, 1967, as now or hereafter amended, may be used to provide revenue for the fund.

If it is not possible or practicable for the county to make contributions for age and service annuity and widow's annuity concurrently with the employee contributions made for such purposes, such county shall make such contributions as soon as

possible and practicable thereafter with interest thereon at the effective rate until the time it shall be made.

(d) With respect to employees whose wages are funded as participants under the Comprehensive Employment and Training Act of 1973, as amended (P.L. 93-203, 87 Stat. 839, P.L. 93-567, 88 Stat. 1845), hereinafter referred to as CETA, subsequent to October 1, 1978, and in instances where the board has elected to establish a manpower program reserve, the board shall compute the amounts necessary to be credited to the manpower program reserves established and maintained as herein provided, and shall make a periodic determination of the amount of required contributions from the County to the reserve to be reimbursed by the federal government in accordance with rules and regulations established by the Secretary of the United States Department of Labor or his designee, and certify the results thereof to the County Board. Any such amounts shall become a credit to the County and will be used to reduce the amount which the County would otherwise contribute during succeeding years for all employees.

(e) In lieu of establishing a manpower program reserve with respect to employees whose wages are funded as participants under the Comprehensive Employment and Training Act of 1973, as authorized by subsection (d), the board may elect to establish a special County contribution rate for all such employees. If this option is elected, the County shall contribute to the Fund from federal funds provided under the Comprehensive Employment and Training Act program at the special rate so established and such contributions shall become a credit to the County and be used to reduce the amount which the County would otherwise contribute during succeeding years for all employees.

(Source: P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-170) (from Ch. 108 1/2, par. 9-170)

Sec. 9-170. Contributions for age and service annuities for present employees, future entrants and re-entrants.

(a) Beginning on the effective date as to a present employee in paragraph (a) or (c) of Section 9-109, or as to a future entrant in paragraph (a) of Section 9-110, and beginning on September 1, 1935 as to a present employee in paragraph (b) (1) of Section 9-109 or as to a future entrant in paragraph (b) or (d) of Section 9-110, and beginning from the date of becoming a contributor as to any present employee in paragraph (b)(2) or (d) of Section 9-109, or any future entrant in paragraph (c) or (e) of Section 9-110, there shall be deducted and contributed to this fund 3 1/4% of each payment of salary for age and service annuity until July 1, 1947. Beginning July 1, 1947 and prior to July 1, 1953, 5% and beginning July 1, 1953, and prior to September 1, 1971, 6%; and beginning September 1, 1971, 6 1/2%

of each payment of salary of such employees shall be deducted and contributed for such purpose.

From and after January 1, 1966, each deputy sheriff as defined in Section 9-128.1 who is a member of the County Police Department and a participant of this fund shall contribute 7% of salary for age and service annuity. At the time of retirement on annuity, a deputy sheriff who is a member of the County Police Department, who chooses to retire under provisions of this Article other than Section 9-128.1, may receive a refund of the difference between the contributions made as a deputy sheriff who is a member of the County Police Department and the contributions that would have been made for such service not as a deputy sheriff who is a member of the County Police Department, including interest earned.

Such deductions beginning on the effective date and prior to July 1, 1947 shall be made and continued for a future entrant while he is in the service until he attains age 65, and beginning on the effective date and prior to July 1, 1953 for a present employee while he is in the service until the amount so deducted from his salary or paid by him according to law to any county pension fund in force on the effective date, with interest on both such amounts at 4% per annum, equals the sum that would have been to his credit from sums deducted from his salary if deductions at the rate herein stated had been made during his entire service until he attained age 65, with interest at 4% per annum for the period subsequent to his attainment of age 65. Such deductions beginning July 1, 1947 for future entrants and beginning July 1, 1953 for present employees shall be made and continued while such future entrant or present employee is in the service.

(b) Concurrently with each employee contribution, the county shall contribute beginning on the effective date and prior to July 1, 1947, 5 3/4%, and beginning on July 1, 1947 and prior to July 1, 1953, 7%; and beginning on July 1, 1953, 6% of each payment of such salary until the employee attains age 65.

(c) Each present employee contribution made prior to the date the age and service annuity for such employee is fixed, each future entrant contribution, and each corresponding county contribution shall be allocated to the account of and credited to the employee for whose benefit it is made.

(Source: P.A. 86-1488.)

(40 ILCS 5/9-170.1) (from Ch. 108 1/2, par. 9-170.1)

Sec. 9-170.1. From and after January 1, 1970 any employee who is credited with 35 or more years of contributing service may elect to discontinue the salary deductions for all annuities as specified in Sections 9-133, 9-170, and 9-176. Upon such election the annuity for the employee and his wife or widow is

fixed and determined as of the date of such discontinuance. No increase in annuity for the employee or his wife or widow accrues thereafter while he is in service. This election shall be in writing to the Retirement Board at least 60 days before the date the salary deductions cease.

(Source: P.A. 90-655, eff. 7-30-98.)

(40 ILCS 5/9-170.2) (from Ch. 108 1/2, par. 9-170.2)

Sec. 9-170.2. The county may pick up the employee contributions required by Sections 9-133, 9-170, 9-176, 9-176.1 for salary earned after December 31, 1981. If employee contributions are not picked up, the amount that would have been picked up under this amendatory Act of 1980 shall continue to be deducted from salary. If contributions are picked up they shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code; however, the county shall continue to withhold Federal and state income taxes based upon these contributions until the Internal Revenue Service or the Federal courts rule that pursuant to Section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The county shall pay these employee contributions from the same source of funds which is used in paying salary to the employee. The county may pick up these contributions by a reduction in the cash salary of the employee or by an offset against a future salary increase or by a combination of a reduction in salary and offset against a future salary increase. If employee contributions are picked up they shall be treated for all purposes of this Article 9, including Section 9-169, in the same manner and to the same extent as employee contributions made prior to the date picked up.

(Source: P.A. 81-1536.)

(40 ILCS 5/9-171) (from Ch. 108 1/2, par. 9-171)

Sec. 9-171. Additional contributions for age and service annuities for present employees, future entrants and re-entrants.

(a) From and after September 1, 1935, in addition to the contributions provided in Section 9-170 for each present employee described in subdivision (b) of Section 9-109 and each future entrant and each re-entrant described in subdivision (d) or (e) of Section 9-110, 3 1/4% of each payment of salary, not in excess of salary of \$3,000 per year, shall be contributed by an employee for age and service annuity. Upon election by such employee made prior to September 1, 1935, any other integral multiple of 3 1/4% of such payment shall be contributed.

The contributions shall be made as a deduction from salary

and shall be continued while the employee is in service until the total of the amounts contributed for age and service annuity with interest at the effective rate is equal to the sum which would have accumulated under this Article because of contributions for age and service annuity if such contributions were made for such purposes during the entire periods of his service for such county or the retirement board under this Article and improved by interest at the effective rate.

(b) Concurrently with each such contribution, the county shall contribute 5 3/4% of each payment of salary, not in excess of \$3,000 a year. Such contributions shall be made until the total of the amounts contributed by the county on behalf of such employee for age and service annuity with interest at the effective rate shall be equal to the sum which would have accumulated from county contributions for age and service annuity if contributions by the county had been made for such purposes during the entire periods of service in accordance with this Article and improved by interest to such time at the effective rate.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-172) (from Ch. 108 1/2, par. 9-172)

Sec. 9-172. Contributions by employee after annuity is fixed. Any contributions by an employee from and after the date when his age and service annuity is fixed shall not increase the amount of such annuity. The contributions shall be applied toward the extra cost of a minimum annuity where payable over the amount of age and service annuity. The accumulated sum arising therefrom shall be refunded when the employee withdraws from service if he is not entitled to annuity, or shall be applied toward the extra cost of such minimum annuity if he is eligible therefor over the age and service annuity to the extent of such extra cost as provided in Section 9-150 of this Act and the balance, if any, shall be refunded. When the employee is not entitled to minimum annuity, or upon death of the employee while in the service after attaining age 65 with less than 10 years of service credit at date of death, the accumulated sum arising from employee contributions after his annuity was fixed at age 65 shall be refunded to his widow.

(Source: P.A. 83-1362.)

(40 ILCS 5/9-173) (from Ch. 108 1/2, par. 9-173)

Sec. 9-173. Additional contributions and credits-all employees.

Any employee in service on July 1, 1947, may elect to make additional contributions while in service which shall not exceed 7/13 of the sum accumulated for age and service annuity on July 1, 1947, or at age 65 if he attained such age prior thereto. The

time and manner of making such additional contributions shall be prescribed by the board. Concurrently with each such additional contribution, the county shall contribute 1 and 4/10 times the additional contributions.

These contributions shall be improved at interest at the rate and in like manner as other employee and county contributions; provided, that the employee, while in service, may request a refund of all or any part of his contributions, without interest, or shall have them refunded to him, without interest, when he retires on annuity or to his widow, if and to the extent they do not serve to increase the annuity otherwise payable to him or his widow.

By such refund the employee or his widow surrenders and forfeits all rights which might otherwise have accrued by virtue of any amount so refunded, including related county contributions.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-174) (from Ch. 108 1/2, par. 9-174)

Sec. 9-174. Contributions by disabled employee whose ordinary disability benefit has expired.

In the case of any disabled employee whose credit for ordinary disability benefit purposes has expired and who continues to be disabled such employee shall have the right to contribute to the fund at the current contribution rate for a period not to exceed a total of 12 months during his entire period of service and to receive credit for all annuity purposes for any such periods paid for. Such payment shall not affect the employee's resignation date for purposes of annuity.

(Source: P.A. 86-1488.)

(40 ILCS 5/9-175) (from Ch. 108 1/2, par. 9-175)

Sec. 9-175. Interest credits-all employees.

Amounts allocated to the account of and credited for age and service and prior service annuity shall be improved by interest at the effective rate during the time thereafter an employee is in service until the amount of his annuity is fixed.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-176) (from Ch. 108 1/2, par. 9-176)

Sec. 9-176. Contributions for widow's annuity for widows of present employees, future entrants and re-entrants.

(a) Beginning on the effective date as to a present employee in paragraph (a) or (c) of Section 9-109, or as to a future entrant in paragraph (a) of Section 9-110, and beginning on September 1, 1935, as to a present employee in paragraph (b) (1) of Section 9-109 or as to a future entrant in paragraph (b) or

(d) of Section 9-110, and beginning from the date of becoming a contributor as to any present employee in paragraph (b) (2) or (d) of Section 9-109, or any future entrant in paragraph (c) or (e) of Section 9-110, there shall be deducted and contributed by each male employee 1%, and from and after January 1, 1966, 1 1/2%, of each payment of salary for widow's annuity. Deductions shall be continued during service until the employee attains age 65.

(b) Concurrently with each employee contribution, the county shall contribute beginning on the effective date and prior to July 1, 1947, 1 3/4%, and beginning on July 1, 1947, 2% of salary.

(c) Each employee contribution made prior to the date when the amount of widow's annuity for an employee is fixed and each concurrent County Contribution Credit shall be allocated to the account of and credited to the employee for whose benefit it is made.

(Source: Laws 1965, p. 1254.)

(40 ILCS 5/9-176.1) (from Ch. 108 1/2, par. 9-176.1)

Sec. 9-176.1. Contributions by female employees. (a) Effective as of October 1, 1974, each female employee shall contribute at the same rates as a male employee for widow's annuity or other benefits, to the end that like credits may be established and maintained for both male and female employees for all purposes of this Article with respect to annuities, benefits, contribution rates, refunds and other provisions of this Article.

(b) Any female employee shall have the option of making contributions for the aforesaid purposes covering the period prior to October 1, 1974, and receiving pension credits therefor, including the concurrent credits from city contributions. Such contributions shall include interest at 4% per annum from the dates such contributions should have been made from the beginning of their service to the dates of payment to the end that equal credits may be provided for all employees under this Article.

(Source: P.A. 81-1536.)

(40 ILCS 5/9-177) (from Ch. 108 1/2, par. 9-177)

Sec. 9-177. Additional contributions for widow's annuity for widows of present employees, future entrants and re-entrants. In addition to the contributions to be made by each employee and by the county for widow's annuity as herein provided additional contributions shall be made as follows:

(a) Beginning September 1, 1935, 1% of each payment of salary, not in excess of \$3,000 a year, of each present employee

described in subdivision (b) of Section 9-109, and of each future entrant and re-entrant described in subdivision (d) or (e) of Section 9-110.

(b) Concurrently with each deduction from salary, the county shall contribute a sum equal to 1 3/4% of each payment of salary, not in excess of \$3,000 a year.

(Source: P.A. 90-655, eff. 7-30-98.)

(40 ILCS 5/9-178) (from Ch. 108 1/2, par. 9-178)

Sec. 9-178. Widow's annuity interest credits-all employees.

Amounts allocated to the account of and credited to the employee for widow's and widow's prior service annuity shall be improved by interest at the effective rate during the time thereafter the employee is in service, until the amount of her annuity is fixed.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-179) (from Ch. 108 1/2, par. 9-179)

Sec. 9-179. Election as to amount to be deducted from compensation-refunds.

(a) Any employee who failed to elect to make contributions beginning on September 1, 1935, for any period of service while he was not a contributor to the fund or any employee who elected to make contributions for such period and desires to change the amounts previously authorized by him, may, upon application to the board elect to make such contributions. Any such election shall be made in accordance with the provisions of this Article.

Interest on sums accumulated to the credit of such employee shall be adjusted for the periods of time during which such contributions are made.

(b) Any employee may contribute to the fund for any period of service rendered to such county after January 1, 1926, by virtue of appointment or election to a position which did not allow him to contribute or to receive credit under the provisions of "The 1925 Act" of this Article. Such contributions may include: (1) any period during which he was in the armed service of the United States if he left the service of the county to enter military service in the armed services and returned to the service of such county within 90 days after his discharge from such armed service, and if such county did not make such payment on his behalf, (2) any period of service for the county for which salary or wages were paid in whole or in part by the State of Illinois and for which he was not allowed to participate in a pension fund and also such period of service for which lodging, board, and laundry was provided by the employer, in lieu of salary, and no other salary or wages were paid, in which case the salary base to be considered for such

service shall be the amount set forth in Section 9-112, paragraph (c) of this Article, (3) such amounts as he would have contributed for annuity purposes had deductions from his salary been made at the rates in effect under the provisions of "The 1925 Act" during the period of time such service was rendered.

Upon making such contributions he shall be credited with concurrent county contributions at the rates in effect for county employees during the periods such service was rendered. Such payments and concurrent county contributions shall be made with interest at the effective rate and shall, together with all other amounts contributed by such employee for annuity purposes, be considered in computing the annuities to which such employee or his widow shall have a right. Any such periods of service for which payment is made shall be counted as periods of service for annuity purposes.

In order to be credited as service under Section 9-134 of this Article all such payments by a county employee must be made in full while the employee is still in service of the county. If payment is not so made any payments made with interest at the effective rate shall be refunded to the employee when he withdraws from service, or to his widow in the event of his death, or if no widow, in accordance with the other refund provisions of this Article. The employee may elect to have such partial payments made by him, together with the concurrent county contributions and interest, credited toward the age and service and widow's annuities on the assumption that the payments shall apply to his earliest service. In the event of death of the employee, while in service, his widow may elect to have such payments and related county contributions, and interest, credited for widow's annuity, to the extent that they do not increase her annuity above that fixed for her on the assumption her deceased husband had continued in service at the rate of his final salary until he became 65 years of age, and the proportional part of the payments and related contributions were included.

(Source: P.A. 77-1199.)

(40 ILCS 5/9-179.1) (from Ch. 108 1/2, par. 9-179.1)

Sec. 9-179.1. Military service. A contributing employee as of January 1, 1993 with at least 25 years of service credit may apply for creditable service for up to 2 years of military service whether or not the military service followed service as a county employee. The military service need not have been served in wartime, but the employee must not have been dishonorably discharged. To establish this creditable service the applicant must pay to the Fund, while in the service of the county, an amount determined by the Fund to represent the employee contributions for the creditable service established,

based on the employee's rate of compensation on his or her last day as a contributor before the military service, or on his or her first day as a contributor after the military service, whichever is greater, plus interest at the effective rate from the date of discharge to the date of payment. If a person who has established any credit under this Section applies for or receives any early retirement incentive under Section 9-134.2, the credit under this Section shall be forfeited and the amount paid to the Fund under this Section shall be refunded.
(Source: P.A. 87-1265.)

(40 ILCS 5/9-179.2) (from Ch. 108 1/2, par. 9-179.2)

Sec. 9-179.2. Other governmental service-former county service. Any employee who first becomes a contributor before the effective date of this amendatory Act of the 99th General Assembly, who has rendered service to any "governmental unit" as such term is defined in the "Retirement Systems Reciprocal Act" under Article 20 of the Illinois Pension Code, who did not contribute to the retirement system of such "governmental unit", including the retirement system created by this Article 9 of the Illinois Pension Code, for such service because of ineligibility for participation and has no equity or rights in such retirement system because of such service shall be given credit for such service in this fund, provided:

(a) the employee shall pay to this fund, while in the service of such county, or while in the service of a governmental unit whose retirement system has adopted the "Retirement Systems Reciprocal Act", such amounts, including interest at the effective rate, as he would have paid to this fund, on the basis of his salary in effect during the service rendered to such other "governmental unit" at the rates prescribed in this Article 9 for the periods of such service to the end that such service shall be considered as service rendered to such county, with all the rights and conditions attaching to such service and payments; and

(b) this Section shall not be applicable to any period of such service for which the employee retains credit in any other public annuity and benefit fund established by Act of the Legislature of this State and in operation for employees of such other "governmental unit" from which such employee was transferred.

(Source: P.A. 99-578, eff. 7-15-16.)

(40 ILCS 5/9-179.3) (from Ch. 108 1/2, par. 9-179.3)

Sec. 9-179.3. Optional plan of additional benefits and contributions.

(a) While this plan is in effect, an employee may establish additional optional credit for additional optional benefits by electing in writing at any time to make additional optional contributions. The employee may discontinue making the additional optional contributions at any time by notifying the fund in writing.

(b) Additional optional contributions for the additional optional benefits shall be as follows:

(1) For service after the option is elected, an additional contribution of 3% of salary shall be contributed to the fund on the same basis and under the same conditions as contributions required under Sections 9-170 and 9-176.

(2) For service before the option is elected, an additional contribution of 3% of the salary for the applicable period of service, plus interest at the effective rate from the date of service to the date of payment. All payments for past service must be paid in full before credit is given. No additional optional contributions may be made for any period of service for which credit has been previously forfeited by acceptance of a refund, unless the refund is repaid in full with interest at the effective rate from the date of refund to the date of repayment.

(c) Additional optional benefits shall accrue for all periods of eligible service for which additional contributions are paid in full. The additional benefit shall consist of an additional 1% for each year of service for which optional contributions have been paid, based on the highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal, to be added to the employee retirement annuity benefits as otherwise computed under this Article. The calculation of these additional benefits shall be subject to the same terms and conditions as are used in the calculation of retirement annuity under Section 9-134. The additional benefit shall be included in the calculation of the automatic annual increase in annuity, and in the calculation of widow's annuity, where applicable. However no additional benefits will be granted which produce a total annuity greater than the applicable maximum established for that type of annuity in this Article, and additional benefits shall not apply to any benefit computed under Section 9-128.1.

(d) Refunds of additional optional contributions shall be made on the same basis and under the same conditions as provided under Sections 9-164, 9-166 and 9-167. Interest shall be credited at the effective rate on the same basis and under the same conditions as for other contributions.

(e) (Blank).

(f) The tax levy, computed under Section 9-169, shall be based on employee contributions including the amount of optional additional employee contributions.

(g) Service eligible under this Section may include only service as an employee of the County as defined in Section 9-108, and subject to Sections 9-219 and 9-220. No service granted under Section 9-121.1, 9-121.4 or 9-179.2 shall be eligible for optional service credit. No optional service credit may be established for any military service, or for any service under any other Article of this Code. Optional service credit may be established for any period of disability paid from this fund, if the employee makes additional optional contributions for such periods of disability.

(h) This plan of optional benefits and contributions shall not apply to any former county employee receiving an annuity from the fund, who re-enters service as a County employee, unless he renders at least 3 years of additional service after the date of re-entry.

(i) The effective date of the optional plan of additional benefits and contributions shall be July 1, 1985, or the date upon which approval is received from the Internal Revenue Service, whichever is later.

(j) This plan of additional benefits and contributions shall expire July 1, 2005. No additional contributions may be made after that date, and no additional benefits will accrue after that date.

(Source: P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-179.4)

Sec. 9-179.4. Service for periods of furlough or salary reduction.

(a) An active participant may establish service credit and earnings credit for periods of furlough beginning on or after December 1, 2017 and ending on or before November 30, 2018. To receive this credit, the participant must (i) apply in writing to the Fund before December 31, 2019; (ii) not receive compensation or any type of remuneration from the county for any furlough period; (iii) make, on an after-tax basis, employee contributions required under this Article based on his or her salary during the periods of furlough, plus an amount determined by the Board to be equal to the employer's normal cost of the benefit, plus compounded interest at the actuarially assumed rate from the date of furlough to the date of payment; and (iv) pay the employee contributions required by this Section while he or she is an active participant and within 12 months after the date of application. The participant shall provide, at the time of application, written certification from the county stating (1) the total number of furlough days the participant has been

required to take and (2) that the participant has not received compensation or any type of remuneration from the county for such furlough days.

(b) An active participant may establish earnings credit for periods of salary reduction beginning on or after December 1, 2017 and ending on or before November 30, 2018. To receive this credit, the participant must: (i) apply in writing to the Fund before December 31, 2019; (ii) not receive compensation or any type of remuneration from the county for any reduction in salary; (iii) make, on an after-tax basis, employee contributions required under this Article based on the reduction in salary, plus an amount determined by the Board to be equal to the employer's normal cost of the benefit, plus compounded interest at the actuarially assumed rate from the date of reduction in salary to the date of payment; and (iv) pay the employee contributions required by this Section while he or she is an active participant and within 12 months after the date of application. The participant shall provide, at the time of application, written certification from the county stating (1) the total reduction in salary for each pay period with a reduction in salary and (2) that the participant has not received compensation or any type of remuneration from the county for such reduction in salary.

(c) For the purposes of this Section, the employer's normal cost shall be determined by the Fund's actuarial valuation for the year ending December 31, 2018. Any payments received under this Section shall be considered contributions made by the employee for the purposes of Sections 9-169 and 10-107 of this Code.

(Source: P.A. 101-11, eff. 6-7-19.)

(40 ILCS 5/9-180) (from Ch. 108 1/2, par. 9-180)

Sec. 9-180. Contributions by county for duty disability benefit. In lieu of all amounts ordinarily contributed by an employee and by the county for age and service annuity, and widow's annuity the county shall contribute sums equal to such amounts for any period during which the employee receives duty disability benefit to be credited to the disabled employee for annuity purposes as though he were in active discharge of his duties during any such period of disability.

(Source: P.A. 81-1536.)

(40 ILCS 5/9-181) (from Ch. 108 1/2, par. 9-181)

Sec. 9-181. Contributions by county for ordinary disability benefit.

The county shall contribute all amounts ordinarily contributed by it for annuity purposes for any employee

receiving ordinary disability benefit as though he were in active discharge of his duties during such period of disability. (Source: Laws 1963, p. 161.)

(40 ILCS 5/9-182) (from Ch. 108 1/2, par. 9-182)

Sec. 9-182. Contributions by county for prior service annuities and pensions under former acts.

(a) The county, State or federal contributions authorized in Section 9-169 shall be applied first for the purposes of this Article 9 other than those stated in this Section.

The balance of the sum produced from such contributions shall be applied for the following purposes:

1. "An Act to provide for the formation and disbursement of a pension fund in counties having a population of 150,000 or more inhabitants, for the benefit of officers and employees in the service of such counties", approved June 29, 1915, as amended;

2. Section 9-225 of this Article;

3. To meet such part of any minimum annuity as shall be in excess of the age and service annuity and prior service annuity, and to meet such part of any minimum widow's annuity in excess of the amount of widow's annuity and widow's prior service annuity also for the purpose of providing the county cost of automatic increases in annuity after retirement in accordance with Section 9-133 and for any other purpose for which moneys are not otherwise provided in this Article;

4. (Blank);

5. (Blank).

(b) (Blank).

(Source: P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-183) (from Ch. 108 1/2, par. 9-183)

Sec. 9-183. Contribution by county for administration costs.

The county shall contribute, from revenue derived from taxes herein authorized, the amount necessary to defray costs of administration of the fund.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-184) (from Ch. 108 1/2, par. 9-184)

Sec. 9-184. Estimates of sums required for certain annuities and benefits.

The board shall estimate the amounts required each year to pay for all annuities and benefits and administrative expenses. The amounts shall be paid into the fund annually by the county from the prescribed tax levy.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-184.5)

Sec. 9-184.5. Delinquent contributions; deduction from payments of State funds to the county. If the county fails to transmit to the Fund contributions required of it under this Article by December 31st of the year in which such contributions are due, the Fund may, after giving notice to the county, certify to the State Comptroller the amounts of the delinquent payments in accordance with any applicable rules of the Comptroller, and the Comptroller must, beginning in payment year 2016, deduct and remit to the Fund the certified amounts from payments of State funds to the county.

The State Comptroller may not deduct from any payments of State funds to the county more than the amount of delinquent payments certified to the State Comptroller by the Fund.
(Source: P.A. 99-8, eff. 7-9-15.)

(40 ILCS 5/9-185) (from Ch. 108 1/2, par. 9-185)

Sec. 9-185. Board created.

(a) A board of 9 members shall constitute the board of trustees authorized to carry out the provisions of this Article. The board of trustees shall be known as "The Retirement Board of the County Employees' Annuity and Benefit Fund of County". The board shall consist of 2 members appointed and 7 members elected as hereinafter prescribed.

(b) The appointed members shall be appointed as follows: One member shall be appointed by the comptroller of such county, who may be the comptroller or some person chosen by him from among employees of the county, who are versed in the affairs of the comptroller's office; and one member shall be appointed by the treasurer of such county, who may be the treasurer or some person chosen by him from among employees of the County who are versed in the affairs of the treasurer's office.

The member appointed by the comptroller shall hold office for a term ending on December 1st of the first year following the year of appointment. The member appointed by the county treasurer shall hold office for a term ending on December 1st of the second year following the year of appointment.

Thereafter, each appointed member shall be appointed by the officer that appointed his predecessor for a term of 2 years.

(c) Three county employee members of the board shall be elected as follows: within 30 days from and after the date upon which this Article comes into effect in the county, the clerk of the county shall arrange for and hold an election. One employee shall be elected for a term ending on the first day in the month of December of the first year next following the effective date; one for a term ending on December 1st of the following year; and

one for a term ending December 1st of the second following year.

(d) Beginning December 1, 1988, and every 3 years thereafter, an annuitant member of the board shall be elected as follows: the board shall arrange for and hold an election in which only those participants who are currently receiving retirement benefits under this Article shall be eligible to vote and be elected. Each such member shall be elected to a term ending on the first day in the month of December of the third following year.

(d-1) Beginning December 1, 2001, and every 3 years thereafter, an annuitant member of the board shall be elected as follows: the board shall arrange for and hold an election in which only those participants who are currently receiving retirement benefits under this Article shall be eligible to vote and be elected. Each such member shall be elected to a term ending on the first day in the month of December of the third following year. Until December 1, 2001, the position created under this subsection (d-1) may be filled by the board as in the case of a vacancy.

(e) Beginning December 1, 1988, if a Forest Preserve District Employees' Annuity and Benefit Fund shall be in force in such county and the board of this fund is charged with administering the affairs of such annuity and benefit fund for employees of such forest preserve district, a forest preserve district member of the board shall be elected as of December 1, 1988, and every 3 years thereafter as follows: the board shall arrange for and hold an election in which only those employees of such forest preserve district who are contributors to the annuity and benefit fund for employees of such forest preserve district shall be eligible to vote and be elected. Each such member shall be elected to a term ending on the first day in the month of December of the third following year.

(f) Beginning December 1, 2001, and every 3 years thereafter, if a Forest Preserve District Employees' Annuity and Benefit Fund is in force in the county and the board of this Fund is charged with administering the affairs of that annuity and benefit fund for employees of the forest preserve district, a forest preserve district annuitant member of the board shall be elected as follows: the board shall arrange for and hold an election in which only those participants who are currently receiving retirement benefits under Article 10 shall be eligible to vote and be elected. Each such member shall be elected to a term ending on the first day in the month of December of the third following year. Until December 1, 2001, the position created under this subsection (f) may be filled by the board as in the case of a vacancy.

(Source: P.A. 92-66, eff. 7-12-01.)

(40 ILCS 5/9-186) (from Ch. 108 1/2, par. 9-186)

Sec. 9-186. Board elections. In each year, the board shall conduct a regular election, under rules adopted by it, at least 30 days prior to the expiration of the term of each elected employee or annuitant member.

To be eligible to be a county employee member, a person must be an employee of the county and must have at least 5 years of service credit in that capacity by December 1 of the year of election. To be eligible to be a forest preserve district member, a person must be an employee of the forest preserve district and must have at least 5 years of service credit in that capacity by December 1 of the year of election.

Only those persons who are employees of the county shall be eligible to vote for the 3 county employee members, only those persons who are employees of the forest preserve district shall be eligible to vote for the forest preserve district member, only those persons who are currently receiving retirement benefits under this Article shall be eligible to vote for the annuitant members elected under subsections (d) and (d-1) of Section 9-185, and only those persons who are currently receiving retirement benefits under Article 10 shall be eligible to vote for the forest preserve district annuitant member elected under subsection (f) of Section 9-185. The ballot shall be of secret character.

Except as otherwise provided in Section 9-187, each member of the board shall hold office until his successor is chosen and has qualified.

Any person elected or appointed a member of the board shall qualify for the office by taking an oath of office to be administered by the county clerk or a person designated by him. A copy thereof shall be kept in the office of the county clerk. Any appointment or notice of election shall be in writing and the written instrument shall be filed with the oath.

(Source: P.A. 92-66, eff. 7-12-01.)

(40 ILCS 5/9-187) (from Ch. 108 1/2, par. 9-187)

Sec. 9-187. Board vacancy.

(a) A vacancy in the membership of the board shall be filled as follows:

If the vacancy is that of an appointive member, the official who appointed him shall appoint a person to serve for the unexpired term.

If the vacancy is that of a county employee member, the remaining members of the board shall appoint a successor from among the employees of the county, who shall serve during the remainder of the unexpired term.

If the vacancy is that of a forest preserve district member,

the remaining members of the board shall appoint a successor from among the employees of the forest preserve district, who shall serve during the remainder of the unexpired term.

If the vacancy is that of an annuitant member other than a forest preserve district annuitant member, the remaining members of the board shall appoint a successor from among those persons who are currently receiving retirement benefits under this Article.

If the vacancy is that of a forest preserve district annuitant member, the remaining members of the board shall appoint a successor from among those persons who are currently receiving retirement benefits under Article 10.

(b) Any county or forest preserve district member who withdraws from service shall automatically cease to be a member of the board. Any annuitant member (other than a forest preserve district annuitant member) whose retirement benefits cease under this Article, and any forest preserve district annuitant member whose retirement benefits cease under Article 10, shall also automatically cease to be a member of the Board.

(Source: P.A. 92-66, eff. 7-12-01.)

(40 ILCS 5/9-188) (from Ch. 108 1/2, par. 9-188)

Sec. 9-188. Board officers.

The board shall elect annually at its regular December meeting from among its members, by a majority vote of the members voting on the question, a president, vice-president and a secretary who shall serve, respectively, until a successor is elected. The secretary shall keep a complete record of the proceedings of all board meetings and perform such other duties as the board directs.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-189) (from Ch. 108 1/2, par. 9-189)

Sec. 9-189. Board meetings. The board shall hold regular meetings in each month and special meetings as it deems necessary. A majority of the members shall constitute a quorum for the transaction of business at any meeting, but no annuity or benefit shall be granted or payments made by the fund unless ordered by a vote of the majority of the board members as shown by roll call entered upon the official record of the meeting. Meetings of the board shall be open to the public.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-190) (from Ch. 108 1/2, par. 9-190)

Sec. 9-190. Board powers and duties. The board shall have the powers and duties stated in Sections 9-191 to 9-202.1, inclusive, in addition to such other powers and duties provided

in this Article.

(Source: P.A. 98-551, eff. 8-27-13.)

(40 ILCS 5/9-191) (from Ch. 108 1/2, par. 9-191)

Sec. 9-191. To supervise collections.

To see that all amounts specified in this Article to be applied to the fund, from any source, are collected and applied.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-192) (from Ch. 108 1/2, par. 9-192)

Sec. 9-192. To notify of deductions. To notify the comptroller of the county of the deductions to be made from the salaries of employees.

(Source: P.A. 81-1536.)

(40 ILCS 5/9-193) (from Ch. 108 1/2, par. 9-193)

Sec. 9-193. To accept gifts.

To accept by gift, grant, bequest or otherwise any money or property of any kind and use the same for the purposes of the fund.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-194) (from Ch. 108 1/2, par. 9-194)

Sec. 9-194. To invest the reserves. To invest the reserves of the fund in accordance with Sections 1-109, 1-109.1, 1-109.2, 1-110, 1-111, 1-114, and 1-115 of this Act. Investments made in accordance with Section 1-113 shall be deemed to be prudent.

The retirement board may sell any security held by it at any time it deems it desirable.

The board may enter into agreements and execute documents that it determines to be necessary to complete any investment transaction.

All investments shall be clearly held and accounted for to indicate ownership by the board. The board may direct the registration of securities in its own name or in the name of a nominee created for the express purpose of registration of securities by a savings and loan association or national or State bank or trust company authorized to conduct a trust business in the State of Illinois.

Investments shall be carried at cost or at a value determined in accordance with generally accepted accounting principles.

(Source: P.A. 91-887, eff. 7-6-00.)

(40 ILCS 5/9-194.1) (from Ch. 108 1/2, par. 9-194.1)

Sec. 9-194.1. To lend securities. The Board may lend

securities owned by the Fund to a borrower upon such terms and conditions as may be mutually agreed in writing. The agreement shall provide that during the period of the loan the Fund shall retain the right to receive, or collect from the borrower, all dividends, interest rights, or any distributions to which the Fund would have otherwise been entitled. The borrower shall deposit with the Fund as collateral for the loan cash, U.S. Government securities, or letters of credit equal to the market value of the securities at the time the loan is made and shall increase the amount of collateral if and when the Fund requests an additional amount because of subsequent increased market value of the securities.

The period for which the securities may be loaned may not exceed one year, and the loan agreement may specify earlier termination by either party upon mutually agreed conditions.
(Source: P.A. 87-794.)

(40 ILCS 5/9-194.2) (from Ch. 108 1/2, par. 9-194.2)

Sec. 9-194.2. To rent office facilities. The Retirement Board may rent or lease any office facilities that it deems desirable for the purposes of the Fund.
(Source: P.A. 87-794.)

(40 ILCS 5/9-195) (from Ch. 108 1/2, par. 9-195)

Sec. 9-195. To have an audit.

To have an audit of the accounts of the fund made at least once each year by certified public accountants.
(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-196) (from Ch. 108 1/2, par. 9-196)

Sec. 9-196. To authorize payments.

To authorize or suspend the payment of any annuity or benefit in accordance with this Article. The board shall have exclusive original jurisdiction in all matters relating to the fund, including, in addition to all other matters, all claims for annuities, pensions, benefits or refunds.
(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-197) (from Ch. 108 1/2, par. 9-197)

Sec. 9-197. To determine service credits.

To require each employee to file a statement concerning service rendered the county prior to the effective date. The board shall make a determination of the length of such service and establish from any available information the period of service rendered prior to the effective date.

Such determination shall be conclusive unless the board

reconsiders and changes its determination.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-198) (from Ch. 108 1/2, par. 9-198)

Sec. 9-198. To issue certificate of prior service.

To issue a certificate showing the entire period of service rendered by a present employee prior to the effective date and the amounts to his credit for prior service and widow's prior service annuity.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-199) (from Ch. 108 1/2, par. 9-199)

Sec. 9-199. To submit an annual report. To submit a report in July of each year to the county board of the county as of the close of business on December 31st of the preceding year. The report shall contain a detailed statement of the affairs of the fund, its income and expenditures, and assets and liabilities. The county board shall have power to require and compel the board to prepare and submit such reports.

(Source: P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-200) (from Ch. 108 1/2, par. 9-200)

Sec. 9-200. To subpoena witnesses.

To compel witnesses to attend and testify before it upon any matter concerning the fund and allow witness fees not in excess of \$6 for attendance upon any one day. The president and other members of the board may administer oaths to witnesses.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-201) (from Ch. 108 1/2, par. 9-201)

Sec. 9-201. To appoint employees.

To appoint such actuarial, medical, legal, clerical or other employees as are necessary and fix their compensation.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-202) (from Ch. 108 1/2, par. 9-202)

Sec. 9-202. To make rules.

To make rules and regulations necessary for the administration of the fund.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-202.1)

Sec. 9-202.1. To reproduce records. To have any records kept by the board photographed, microfilmed, or digitally or electronically reproduced in accordance with the Local Records Act. The photographs, microfilm, and digital and electronic

reproductions shall be deemed original records and documents for all purposes, including introduction in evidence before all courts and administrative agencies.

(Source: P.A. 98-551, eff. 8-27-13.)

(40 ILCS 5/9-203) (from Ch. 108 1/2, par. 9-203)

Sec. 9-203. Moneys to be held on deposit. To make the payments authorized by this Article, the board may keep and hold uninvested a sum not in excess of the amounts required to make all annuity payments which become due and payable in the following 90 days. Such sum or any part thereof shall be kept on deposit only in banks or savings and loan associations authorized to do business under the laws of this State. The amount which may be deposited in any such bank or savings and loan association shall not exceed 25% of its paid up capital and surplus.

No bank or savings and loan association shall receive investment funds as permitted by this Section, unless it has complied with the requirements established pursuant to Section 6 of "An Act relating to certain investments of public funds by public agencies", approved July 23, 1943, as now or hereafter amended.

(Source: P.A. 83-541.)

(40 ILCS 5/9-204) (from Ch. 108 1/2, par. 9-204)

Sec. 9-204. Accounting. An adequate system of accounts and records shall be established to give effect to the requirements of this Article and to report the financial condition of the fund. Such additional data as is necessary for required calculations, actuarial valuations, and operation of the fund shall be maintained.

(Source: P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-205)

Sec. 9-205. (Repealed).

(Source: Laws 1963, p. 161. Repealed by P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-206)

Sec. 9-206. (Repealed).

(Source: P.A. 81-1536. Repealed by P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-207)

Sec. 9-207. (Repealed).

(Source: P.A. 81-1536. Repealed by P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-208)
Sec. 9-208. (Repealed).
(Source: P.A. 81-1536. Repealed by P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-209)
Sec. 9-209. (Repealed).
(Source: Laws 1963, p. 161. Repealed by P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-210)
Sec. 9-210. (Repealed).
(Source: Laws 1963, p. 161. Repealed by P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-211)
Sec. 9-211. (Repealed).
(Source: Laws 1963, p. 161. Repealed by P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-212)
Sec. 9-212. (Repealed).
(Source: Laws 1963, p. 161. Repealed by P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-213)
Sec. 9-213. (Repealed).
(Source: Laws 1963, p. 161. Repealed by P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-214)
Sec. 9-214. (Repealed).
(Source: P.A. 76-1574. Repealed by P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-215)
Sec. 9-215. (Repealed).
(Source: P.A. 81-1536. Repealed by P.A. 95-369, eff. 8-23-07.)

(40 ILCS 5/9-216) (from Ch. 108 1/2, par. 9-216)
Sec. 9-216. Treasurer of fund. The county treasurer shall be ex-officio the treasurer and custodian of the fund and shall furnish to the board a bond of such amount as the board designates, which shall indemnify the board against any loss which may result from any action or failure to act by him or any of his agents. Fees and charges incidental to the procuring of such bond shall be paid by the board. In addition to tax and employee contributions constituting the fund, the treasurer is authorized to receive and deposit in the fund warrants issued by

this State representing deductions from the salary of the employees designated in paragraph (e) of Section 9-108, but only for such period as they remain members of the fund, and such other contributions of State funds as may be authorized by law. (Source: P.A. 81-1536.)

(40 ILCS 5/9-217) (from Ch. 108 1/2, par. 9-217)
Sec. 9-217. Attorney.

The chief legal officer of the county shall be the legal advisor of an attorney for the board. If it shall deem such action necessary for the conservation of the fund, the board may in its discretion employ another attorney for advice or other service in relation to any particular case. (Source: Laws 1963, p. 161.)

(40 ILCS 5/9-218) (from Ch. 108 1/2, par. 9-218)

Sec. 9-218. Computation of term of service, annual salary and salary deductions. For the purpose of this Article, term of service, annual salary, and salary deductions shall be computed as provided in Sections 9-219 to 9- 222 inclusive. (Source: P.A. 81-1536.)

(40 ILCS 5/9-219) (from Ch. 108 1/2, par. 9-219)

(Text of Section WITH the changes made by P.A. 98-599, which has been held unconstitutional)

Sec. 9-219. Computation of service.

(1) In computing the term of service of an employee prior to the effective date, the entire period beginning on the date he was first appointed and ending on the day before the effective date, except any intervening period during which he was separated by withdrawal from service, shall be counted for all purposes of this Article.

(2) In computing the term of service of any employee on or after the effective date, the following periods of time shall be counted as periods of service for age and service, widow's and child's annuity purposes:

(a) The time during which he performed the duties of his position.

(b) Vacations, leaves of absence with whole or part pay, and leaves of absence without pay not longer than 90 days.

(c) For an employee who is a member of a county police department or a correctional officer with the county department of corrections, approved leaves of absence without pay during which the employee serves as a full-time officer or employee of an employee association, the membership of which consists of other participants in the

Fund, provided that the employee contributes to the Fund (1) the amount that he would have contributed had he remained an active employee in the position he occupied at the time the leave of absence was granted, (2) an amount calculated by the Board representing employer contributions, and (3) regular interest thereon from the date of service to the date of payment. However, if the employee's application to establish credit under this subsection is received by the Fund on or after July 1, 2002 and before July 1, 2003, the amount representing employer contributions specified in item (2) shall be waived.

For a former member of a county police department who has received a refund under Section 9-164, periods during which the employee serves as head of an employee association, the membership of which consists of other police officers, provided that the employee contributes to the Fund (1) the amount that he would have contributed had he remained an active member of the county police department in the position he occupied at the time he left service, (2) an amount calculated by the Board representing employer contributions, and (3) regular interest thereon from the date of service to the date of payment. However, if the former member of the county police department retires on or after January 1, 1993 but no later than March 1, 1993, the amount representing employer contributions specified in item (2) shall be waived.

For leaves of absence to which this item (c) applies and for other periods to which this item (c) applies, including those leaves of absence and other periods of service beginning before January 5, 2012 (the effective date of Public Act 97-651), the employee or former member must continue to remain in sworn status, subject to the professional standards of the public employer or those terms established in statute.

(d) Any period of disability for which he received disability benefit or whole or part pay.

(e) For a person who first becomes an employee before the effective date of this amendatory Act of the 98th General Assembly, accumulated vacation or other time for which an employee who retires on or after November 1, 1990 receives a lump sum payment at the time of retirement, provided that contributions were made to the fund at the time such lump sum payment was received. The service granted for the lump sum payment shall not change the employee's date of withdrawal for computing the effective date of the annuity.

(f) An employee who first becomes an employee before the effective date of this amendatory Act of the 98th

General Assembly may receive service credit for annuity purposes for accumulated sick leave as of the date of the employee's withdrawal from service, not to exceed a total of 180 days, provided that the amount of such accumulated sick leave is certified by the County Comptroller to the Board and the employee pays an amount equal to 8.5% (9% for members of the County Police Department who are eligible to receive an annuity under Section 9-128.1) of the amount that would have been paid had such accumulated sick leave been paid at the employee's final rate of salary. Such payment shall be made within 30 days after the date of withdrawal and prior to receipt of the first annuity check. The service credit granted for such accumulated sick leave shall not change the employee's date of withdrawal for the purpose of computing the effective date of the annuity.

(3) In computing the term of service of an employee on or after the effective date for ordinary disability benefit purposes, the following periods of time shall be counted as periods of service:

(a) Unless otherwise specified in Section 9-157, the time during which he performed the duties of his position.

(b) Paid vacations and leaves of absence with whole or part pay.

(c) Any period for which he received duty disability benefit.

(d) Any period of disability for which he received whole or part pay.

(4) For an employee who on January 1, 1958, was transferred by Act of the 70th General Assembly from his position in a department of welfare of any city located in the county in which this Article is in force and effect to a similar position in a department of such county, service shall also be credited for ordinary disability benefit and child's annuity for such period of department of welfare service during which period he was a contributor to a statutory annuity and benefit fund in such city and for which purposes service credit would otherwise not be credited by virtue of such involuntary transfer.

(5) An employee described in subsection (e) of Section 9-108 shall receive credit for child's annuity and ordinary disability benefit for the period of time for which he was credited with service in the fund from which he was involuntarily separated through class or group transfer; provided, that no such credit shall be allowed to the extent that it results in a duplication of credits or benefits, and neither shall such credit be allowed to the extent that it was or may be forfeited by the application for and acceptance of a refund from the fund from which the employee was transferred.

(6) Overtime or extra service shall not be included in

computing service. Not more than 1 year of service shall be allowed for service rendered during any calendar year.

(7) Unused sick or vacation time shall not be used to compute the service of an employee who first becomes an employee on or after the effective date of this amendatory Act of the 98th General Assembly.

(Source: P.A. 97-651, eff. 1-5-12; 98-599, eff. 6-1-14.)

(Text of Section WITHOUT the changes made by P.A. 98-599, which has been held unconstitutional)

Sec. 9-219. Computation of service.

(1) In computing the term of service of an employee prior to the effective date, the entire period beginning on the date he was first appointed and ending on the day before the effective date, except any intervening period during which he was separated by withdrawal from service, shall be counted for all purposes of this Article.

(2) In computing the term of service of any employee on or after the effective date, the following periods of time shall be counted as periods of service for age and service, widow's and child's annuity purposes:

(a) The time during which he performed the duties of his position.

(b) Vacations, leaves of absence with whole or part pay, and leaves of absence without pay not longer than 90 days.

(c) For an employee who is a member of a county police department or a correctional officer with the county department of corrections, approved leaves of absence without pay during which the employee serves as a full-time officer or employee of an employee association, the membership of which consists of other participants in the Fund, provided that the employee contributes to the Fund (1) the amount that he would have contributed had he remained an active employee in the position he occupied at the time the leave of absence was granted, (2) an amount calculated by the Board representing employer contributions, and (3) regular interest thereon from the date of service to the date of payment. However, if the employee's application to establish credit under this subsection is received by the Fund on or after July 1, 2002 and before July 1, 2003, the amount representing employer contributions specified in item (2) shall be waived.

For a former member of a county police department who has received a refund under Section 9-164, periods during which the employee serves as head of an employee association, the membership of which consists of other

police officers, provided that the employee contributes to the Fund (1) the amount that he would have contributed had he remained an active member of the county police department in the position he occupied at the time he left service, (2) an amount calculated by the Board representing employer contributions, and (3) regular interest thereon from the date of service to the date of payment. However, if the former member of the county police department retires on or after January 1, 1993 but no later than March 1, 1993, the amount representing employer contributions specified in item (2) shall be waived.

For leaves of absence to which this item (c) applies and for other periods to which this item (c) applies, including those leaves of absence and other periods of service beginning before the effective date of this amendatory Act of the 97th General Assembly, the employee or former member must continue to remain in sworn status, subject to the professional standards of the public employer or those terms established in statute.

(d) Any period of disability for which he received disability benefit or whole or part pay.

(e) Accumulated vacation or other time for which an employee who retires on or after November 1, 1990 receives a lump sum payment at the time of retirement, provided that contributions were made to the fund at the time such lump sum payment was received. The service granted for the lump sum payment shall not change the employee's date of withdrawal for computing the effective date of the annuity.

(f) An employee may receive service credit for annuity purposes for accumulated sick leave as of the date of the employee's withdrawal from service, not to exceed a total of 180 days, provided that the amount of such accumulated sick leave is certified by the County Comptroller to the Board and the employee pays an amount equal to 8.5% (9% for members of the County Police Department who are eligible to receive an annuity under Section 9-128.1) of the amount that would have been paid had such accumulated sick leave been paid at the employee's final rate of salary. Such payment shall be made within 30 days after the date of withdrawal and prior to receipt of the first annuity check. The service credit granted for such accumulated sick leave shall not change the employee's date of withdrawal for the purpose of computing the effective date of the annuity.

(3) In computing the term of service of an employee on or after the effective date for ordinary disability benefit purposes, the following periods of time shall be counted as

periods of service:

(a) Unless otherwise specified in Section 9-157, the time during which he performed the duties of his position.

(b) Paid vacations and leaves of absence with whole or part pay.

(c) Any period for which he received duty disability benefit.

(d) Any period of disability for which he received whole or part pay.

(4) For an employee who on January 1, 1958, was transferred by Act of the 70th General Assembly from his position in a department of welfare of any city located in the county in which this Article is in force and effect to a similar position in a department of such county, service shall also be credited for ordinary disability benefit and child's annuity for such period of department of welfare service during which period he was a contributor to a statutory annuity and benefit fund in such city and for which purposes service credit would otherwise not be credited by virtue of such involuntary transfer.

(5) An employee described in subsection (e) of Section 9-108 shall receive credit for child's annuity and ordinary disability benefit for the period of time for which he was credited with service in the fund from which he was involuntarily separated through class or group transfer; provided, that no such credit shall be allowed to the extent that it results in a duplication of credits or benefits, and neither shall such credit be allowed to the extent that it was or may be forfeited by the application for and acceptance of a refund from the fund from which the employee was transferred.

(6) Overtime or extra service shall not be included in computing service. Not more than 1 year of service shall be allowed for service rendered during any calendar year.

(Source: P.A. 97-651, eff. 1-5-12.)

(40 ILCS 5/9-220) (from Ch. 108 1/2, par. 9-220)

(Text of Section WITH the changes made by P.A. 98-599, which has been held unconstitutional)

Sec. 9-220. Basis of service credit.

(a) In computing the period of service of any employee for annuity purposes under Section 9-134, the following provisions shall govern:

(1) All periods prior to the effective date shall be computed in accordance with the provisions governing the computation of such service.

(2) Service on or after the effective date shall include:

(i) The actual period of time the employee

contributes or has contributed to the fund for service rendered to age 65 plus the actual period of time after age 65 for which the employee performs the duties of his position or performs such duties and is given a county contribution for age and service annuity or minimum annuity purposes.

(ii) Leaves of absence from duty, or vacation, for which an employee receives all or part of his salary.

(iii) For a person who first becomes an employee before the effective date of this amendatory Act of the 98th General Assembly, accumulated vacation or other time for which an employee who retires on or after November 1, 1990 receives a lump sum payment at the time of retirement, provided that contributions were made to the fund at the time such lump sum payment was received. The service granted for the lump sum payment shall not change the employee's date of withdrawal for computing the effective date of the annuity.

(iv) For a person who first becomes an employee before the effective date of this amendatory Act of the 98th General Assembly, accumulated sick leave as of the date of the employee's withdrawal from service, not to exceed a total of 180 days, provided that the amount of such accumulated sick leave is certified by the County Comptroller to the Board and the employee pays an amount equal to 8.5% (9% for members of the County Police Department who are eligible to receive an annuity under Section 9-128.1) of the amount that would have been paid had such accumulated sick leave been paid at the employee's final rate of salary. Such payment shall be made within 30 days after the date of withdrawal and prior to receipt of the first annuity check. The service credit granted for such accumulated sick leave shall not change the employee's date of withdrawal for the purpose of computing the effective date of the annuity.

(v) Periods during which the employee has had contributions for annuity purposes made for him in accordance with law while on military leave of absence during World War II.

(vi) Periods during which the employee receives a disability benefit under this Article.

(vii) For any person who first becomes a member on or after January 1, 2011, the actual period of time the employee contributes or has contributed to the fund for service rendered up to the limitation on salary in subsection (b-5) of Section 1-160 plus the actual period of time thereafter for which the employee performs the

duties of his position and ceased contributing due to the salary limitation in subsection (b-5) of Section 1-160.

(3) The right to have certain periods of time considered as service as stated in paragraph (2) of Section 9-164 shall not apply for annuity purposes unless the refunds shall have been repaid in accordance with this Article.

(4) All service shall be computed in whole calendar months, and at least 15 days of service in any one calendar month shall constitute one calendar month of service, and 1 year of service shall be equal to the number of months, days or hours for which an appropriation was made in the annual appropriation ordinance for the position held by the employee.

(5) Unused sick or vacation time shall not be used to compute the service of an employee who first becomes an employee on or after the effective date of this amendatory Act of the 98th General Assembly.

(b) For all other annuity purposes of this Article the following schedule shall govern the computation of a year of service of an employee whose salary or wages is on the basis stated, and any fractional part of a year of service shall be determined according to said schedule:

Annual or Monthly Basis: Service during 4 months in any 1 calendar year;

Weekly Basis: Service during any 17 weeks of any 1 calendar year, and service during any week shall constitute a week of service;

Daily Basis: Service during 100 days in any 1 calendar year, and service during any day shall constitute a day of service;

Hourly Basis: Service during 800 hours in any 1 calendar year, and service during any hour shall constitute an hour of service.

(Source: P.A. 98-599, eff. 6-1-14.)

(Text of Section WITHOUT the changes made by P.A. 98-599, which has been held unconstitutional)

Sec. 9-220. Basis of service credit.

(a) In computing the period of service of any employee for annuity purposes under Section 9-134, the following provisions shall govern:

(1) All periods prior to the effective date shall be computed in accordance with the provisions governing the computation of such service.

(2) Service on or after the effective date shall include:

(i) The actual period of time the employee contributes or has contributed to the fund for service rendered to age 65 plus the actual period of time after age 65 for which the employee performs the duties of his position or performs such duties and is given a county contribution for age and service annuity or minimum annuity purposes.

(ii) Leaves of absence from duty, or vacation, for which an employee receives all or part of his salary.

(iii) Accumulated vacation or other time for which an employee who retires on or after November 1, 1990 receives a lump sum payment at the time of retirement, provided that contributions were made to the fund at the time such lump sum payment was received. The service granted for the lump sum payment shall not change the employee's date of withdrawal for computing the effective date of the annuity.

(iv) Accumulated sick leave as of the date of the employee's withdrawal from service, not to exceed a total of 180 days, provided that the amount of such accumulated sick leave is certified by the County Comptroller to the Board and the employee pays an amount equal to 8.5% (9% for members of the County Police Department who are eligible to receive an annuity under Section 9-128.1) of the amount that would have been paid had such accumulated sick leave been paid at the employee's final rate of salary. Such payment shall be made within 30 days after the date of withdrawal and prior to receipt of the first annuity check. The service credit granted for such accumulated sick leave shall not change the employee's date of withdrawal for the purpose of computing the effective date of the annuity.

(v) Periods during which the employee has had contributions for annuity purposes made for him in accordance with law while on military leave of absence during World War II.

(vi) Periods during which the employee receives a disability benefit under this Article.

(vii) For any person who first becomes a member on or after January 1, 2011, the actual period of time the employee contributes or has contributed to the fund for service rendered up to the limitation on salary in subsection (b-5) of Section 1-160 plus the actual period of time thereafter for which the employee performs the duties of his position and ceased contributing due to the salary limitation in subsection (b-5) of Section 1-160.

(3) The right to have certain periods of time considered as service as stated in paragraph (2) of Section 9-164 shall not apply for annuity purposes unless the refunds shall have been repaid in accordance with this Article.

(4) All service shall be computed in whole calendar months, and at least 15 days of service in any one calendar month shall constitute one calendar month of service, and 1 year of service shall be equal to the number of months, days or hours for which an appropriation was made in the annual appropriation ordinance for the position held by the employee.

(b) For all other annuity purposes of this Article the following schedule shall govern the computation of a year of service of an employee whose salary or wages is on the basis stated, and any fractional part of a year of service shall be determined according to said schedule:

Annual or Monthly Basis: Service during 4 months in any 1 calendar year;

Weekly Basis: Service during any 17 weeks of any 1 calendar year, and service during any week shall constitute a week of service;

Daily Basis: Service during 100 days in any 1 calendar year, and service during any day shall constitute a day of service;

Hourly Basis: Service during 800 hours in any 1 calendar year, and service during any hour shall constitute an hour of service.

(Source: P.A. 96-1490, eff. 1-1-11.)

(40 ILCS 5/9-220.1)

Sec. 9-220.1. Service of less than 15 days in one month. A member of the General Assembly with service credit in the Fund may establish service credit in the Fund for up to 24 months, during each of which he or she worked for at least one but fewer than 15 days, by purchasing service credit for the number of days needed to bring the total of days worked in each such month up to 15. To establish this credit, the member must pay to the Fund before January 1, 1998 an amount equal to (1) employee contributions based on the number of days for which credit is being purchased, the rate of compensation received by the applicant for the time actually worked during that month, and the rate of contribution in effect for the applicant during that month; plus (2) an amount representing employer contributions, equal to the amount specified in item (1); plus (3) interest on the amounts specified in items (1) and (2) at the rate of 6% per annum, compounded annually, from the date of service to the date of payment. This Section is not limited to persons in service under this Article on or after the effective date of this

amendatory Act of 1997.
(Source: P.A. 90-511, eff. 8-22-97.)

(40 ILCS 5/9-221)
Sec. 9-221. (Repealed).
(Source: Laws 1963, p. 161. Repealed by P.A. 98-551, eff. 8-27-13.)

(40 ILCS 5/9-222) (from Ch. 108 1/2, par. 9-222)
Sec. 9-222. Basis of salary deduction. The total of salary deductions for employee contributions for annuity purposes to be considered for any 1 calendar year shall not exceed that produced by the application of the proper salary deduction rates to the highest annual salary considered for annuity purposes for such year.
(Source: P.A. 81-1536.)

(40 ILCS 5/9-223) (from Ch. 108 1/2, par. 9-223)
Sec. 9-223. Retirement Systems Reciprocal Act. The "Retirement Systems Reciprocal Act", being Article 20 of this Code, as now enacted or hereafter amended, is hereby adopted and made a part of this Article; provided, that where there is a direct conflict in the provisions of such Act and the specific provisions of this Article such latter provisions shall prevail.
(Source: P.A. 86-272.)

(40 ILCS 5/9-224) (from Ch. 108 1/2, par. 9-224)
Sec. 9-224. Employees in territory annexed.
Whenever territory is annexed to the county, any person then employed as a county employee in the annexed territory, who shall be employed by the county on the date of the annexation shall automatically come under this Article, and any service rendered for the annexed territory shall be considered, for the purpose of this Article, as service rendered to the county.
Such employee shall be treated, as of the date such annexation comes into effect, as a present employee of the county on the effective date.
(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-225) (from Ch. 108 1/2, par. 9-225)
Sec. 9-225. County pension fund superseded.
The fund herein provided for on the effective date shall supersede and take the place of and have transferred to it the assets of any county pension fund as herein defined in operation in the county, and the fund herein provided for shall be a continuation of such county pension fund.

All annuities, pensions and other benefits allowed prior to

the effective date by the board of trustees of such County Pension Fund and all claims pending or ungranted on the effective date which thereafter are allowed according to the law establishing such County Pension Fund by the board herein provided for, shall be paid by the board from the fund herein provided for, according to the law or laws under which such annuities, pensions, or other benefits were allowed.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-226) (from Ch. 108 1/2, par. 9-226)

Sec. 9-226. Employees serving county and forest preserve district.

In any forest preserve district created by "An Act to provide for the creation and management of forest preserve districts and repealing certain acts therein named", approved June 27, 1913, as amended, whose employees are covered by an annuity and benefit fund of which the retirement board of the fund created by this Article is ex-officio the retirement board of the fund provided for employees of such forest preserve district, the following provisions shall apply where such employees render service to both the county and such forest preserve district:

(a) Any person who shall be a contributor to the annuity and benefit fund provided for employees of such forest preserve district who withdraws from the service of such district, and becomes employed by such county, shall become a contributor to the fund herein provided for, with the same rights as he would have in the annuity and benefit fund pertaining to such district. All sums to the credit of such employee in the annuity and benefit fund pertaining to such forest preserve district shall be transferred to the annuity and benefit fund for the county, to be used for the benefit of the employee, and such employee shall thereupon cease to have any rights in the fund provided for employees of such district.

(b) If any county employee who is on leave of absence from the service of such county becomes employed by such forest preserve district, the retirement board shall cause deductions to be made from his salary and such deductions shall be credited to him in this fund to be used for the purpose hereof. Contributions on behalf of such employee shall be made by such county, on the same basis as if such service for such forest preserve district had been rendered to such county, and the employee shall have the same rights in this fund while such service is being rendered for such forest preserve district as if it had been rendered to such county.

(c) Any person employed by such county on July 6, 1937, who was employed by such forest preserve district prior to such date, who shall become a contributor to this fund shall be

entitled to prior service credit in this fund for all service rendered by such employee to such forest preserve district prior to such date.

Except as provided in this section, no person classified as an employee of such county shall become classified as an employee of such forest preserve district for any purpose of this Article.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-227) (from Ch. 108 1/2, par. 9-227)

Sec. 9-227. Employees of Cook County School of Nursing-credits.

(a) Any person who was in the employ of the Cook County School of Nursing on July 1, 1947, who becomes included within the provisions of this Article shall be credited in his account as follows:

Contributions by the county for prior service annuity, widow's prior service annuity, age and service annuity and widow's annuity for all periods of time during which he was an employee of such county or such School of Nursing or its predecessor schools for which he has not received such credits. Such contributions shall be at the same rates as were in effect for employees under "The 1925 Act" during such periods of time, and shall bear interest at 4% per annum in the same manner as in the case of any other employee, and shall, together with all other amounts contributed by or for such employee for annuity purposes, be considered in computing the annuity for such employee or his widow.

Any period of employment for which credit is hereby provided shall also be counted as service for all other purposes of this Article, and any other county employee in the service on July 1, 1947, shall receive like credits for service theretofore rendered such schools.

(b) Any such employee may elect to make additional contributions to the fund equal to the sum which, including interest at 4% per annum, would as of the date he became a contributor have accumulated to his credit for age and service annuity and widow's annuity had deductions from his salary been made throughout his entire period of service for which county contributions are hereinbefore in this section provided. Any such additional contributions shall be improved at interest in the same manner as regular salary deductions and shall, together with all other amounts contributed by such employee for age and service and widow's annuity, be considered as deductions from salary for age and service annuity, widow's annuity and refund purposes.

The time and manner in which such additional contributions

may be made shall be prescribed by the board.
(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-228) (from Ch. 108 1/2, par. 9-228)
Sec. 9-228. Attachment; withholding.

(a) The annuities, pensions, refunds, and disability benefits granted under this Article shall be exempt from attachment or garnishment process and shall not be seized, taken, subjected to, detained, or levied upon by virtue of any judgment, or any process or proceeding whatsoever issued out of or by any court in this State, for the payment and satisfaction in whole or in part of any debt, damage, claim, demand, or judgment against any annuitant, pensioner, person entitled to a refund, or other beneficiary hereunder.

(b) No annuitant, pensioner, person entitled to a refund, or other beneficiary shall have any right to transfer or assign his annuity or disability benefit or any part thereof by way of mortgage or otherwise except that an annuitant or a widow annuitant who elects to participate in any group hospitalization plan or group medical surgical plan shall have the right to authorize the Board to deduct the cost to him of such plan from the annuity check and to pay such deducted amount to the group insurance carrier, provided, however, that the Board in its discretion may terminate such right; provided, that the board in its discretion may pay to the wife of any annuitant, pensioner, refund applicant, or disability beneficiary such an amount out of her husband's annuity, pension, refund, or disability benefit as any court may order, or such an amount as the board may consider necessary for the support of his wife or children or both in the event of his disappearance or unexplained absence or his failure to support such wife or children.

(c) The board may retain out of any future annuity, pension, refund or disability benefit payments, such amount, or amounts, as it may require for the repayment of any moneys paid to any annuitant, pensioner, refund applicant, or disability beneficiary through misrepresentation, fraud or error. Any such action of the board shall relieve and release the board and the fund from any liability for any moneys so withheld.

(d) Whenever an annuity, pension, refund, or disability benefit is payable to a minor or to a person adjudged to be under legal disability, the board, in its discretion and when to the best interest of the person concerned, may waive guardianship proceedings and pay the annuity, pension, refund or benefit to the person providing or caring for the minor and to the wife, parent or blood relative providing or caring for the person.

In the event that a person certified by a medical doctor to be under legal disability (i) has no spouse, blood relative, or

other person providing or caring for him or her, (ii) has no guardian of his or her estate, and (iii) is confined to a Medicare-certified, State-licensed nursing home or to a publicly owned and operated nursing home, hospital, or mental institution, the Board may pay any benefit due that person to the nursing home, hospital, or mental institution, to be used for the sole benefit of the person under legal disability.

Payment in accordance with this subsection to a person, nursing home, hospital, or mental institution for the benefit of a minor or person under legal disability shall be an absolute discharge of the Fund's liability with respect to the amount so paid. Any person, nursing home, hospital, or mental institution accepting payment under this subsection shall notify the Fund of the death or any other relevant change in the status of the minor or person under legal disability.

(e) An annuitant may authorize the withholding of a portion of his annuity for payment of dues to any labor organization designated by the annuitant; however, no portion of annuities may be withheld pursuant to this subsection for payment to any one labor organization unless a minimum of 100 annuitants authorize such withholding, except that the Board may allow such withholding for less than 100 annuitants during a probationary period of between 3 and 6 months, as determined by the Board. The Board shall prescribe a form for the authorization of such withholding, and shall provide such forms to employees, annuitants and labor organizations upon request. Amounts withheld by the Board under this subsection shall be promptly paid over to the designated organizations.

Any such labor organization shall have access to the Fund's mailing list of annuitants, upon such terms as the Board may approve. The expenses of any mailing conducted by the labor organization shall be borne by the labor organization.
(Source: P.A. 100-794, eff. 8-10-18.)

(40 ILCS 5/9-229) (from Ch. 108 1/2, par. 9-229)

Sec. 9-229. Board members-no compensation.

No member of the board shall receive any moneys from the fund as salary for service performed as a member of the board or as an employee of the board. Any employee member shall have a right to be reimbursed for any salary withheld from him by any officer or employee of the county, because of attendance at any meeting of the board or the performance of any other duty in connection with the fund.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-230) (from Ch. 108 1/2, par. 9-230)

Sec. 9-230. No commissions on investments.

No member of the board, and no person officially connected with the board, as employee, legal advisor, custodian of the fund, or otherwise shall have any right to receive any commission or other remuneration on account of any investment made by the board, nor shall any such person act as the agent of any other person concerning any such investment.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-231) (from Ch. 108 1/2, par. 9-231)

Sec. 9-231. Duties of county officers. The proper officers of the county and of the retirement board without cost to the fund, shall:

(a) Deduct all sums required to be deducted from the salaries of employees, and pay such sums to the board in such manner as the board shall specify;

(b) Furnish the board on the first day of each month information regarding the employment of any employees, and of all discharges, resignations and suspensions from the service, deaths, and changes in salary which have occurred during the preceding month, with the dates thereof;

(c) Procure for the board, in such form as the board specifies, all information on the employees as to the service, age, salary, residence, marital status, and data concerning their dependents, including information relating to the service rendered by the employee prior to the effective date;

(d) Keep such records concerning employees as the board may reasonably require and shall specify.

(Source: P.A. 81-1536.)

(40 ILCS 5/9-232) (from Ch. 108 1/2, par. 9-232)

Sec. 9-232. Age of employee.

For any employee who has filed an application for appointment to the service of the county, the age stated therein shall be conclusive evidence against the employee of his age for the purposes of this Article, but the board may decide any claim for any annuity, disability benefit, refund or payment according to the age of the employee as shown by other evidence satisfactory to it.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-233) (from Ch. 108 1/2, par. 9-233)

Sec. 9-233. Office facilities.

Suitable rooms for office and meetings of the board shall be assigned by the sheriff of the county.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-234) (from Ch. 108 1/2, par. 9-234)

Sec. 9-234. Compliance with article.

All officers, officials, and employees of the county shall perform any and all acts required to carry out the intent and purposes of this Article.

(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-235) (from Ch. 108 1/2, par. 9-235)

Sec. 9-235. Felony conviction. None of the benefits provided 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 service as an employee.

None of the benefits provided for in this Article shall be paid to any person who otherwise would receive a survivor benefit who is convicted of any felony relating to or arising out of or in connection with the service of the employee from whom the benefit results.

This Section shall not operate to impair any contract or vested right heretofore acquired under any law or laws continued in this Article, nor to preclude the right to a refund, and for the changes under this amendatory Act of the 100th General Assembly, shall not impair any contract or vested right acquired by a survivor prior to the effective date of this amendatory Act of the 100th General Assembly.

All future entrants entering service after July 11, 1955, shall be deemed to have consented to the provisions of this section as a condition of coverage, and all participants entering service subsequent to the effective date of this amendatory Act of the 100th General Assembly shall be deemed to have consented to the provisions of this amendatory Act as a condition of participation.

(Source: P.A. 100-334, eff. 8-25-17.)

(40 ILCS 5/9-236) (from Ch. 108 1/2, par. 9-236)

Sec. 9-236. Administrative review. The provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the board provided for under this Article. The term "administrative decision" is as defined in Section 3-101 of the Code of Civil Procedure.

(Source: P.A. 82-783.)

(40 ILCS 5/9-237) (from Ch. 108 1/2, par. 9-237)

Sec. 9-237. General provisions and savings clause.

The provisions of Article 1 and Article 23 of this Code apply to this Article as though such provisions were fully set

forth in this Article as a part thereof.
(Source: Laws 1963, p. 161.)

(40 ILCS 5/9-238) (from Ch. 108 1/2, par. 9-238)

Sec. 9-238. Employees of county department of public aid who transfer to state employment-preservation of rights. Employees of a County Department of Public Aid in counties of 3,000,000 or more population who transfer to the employment of the State in positions of comparable or substantially similar responsibilities or duties shall retain their earned and accrued rights and benefits established under this Article if they do not receive a refund of their contributions hereunder.

Such employees who on the effective date of the transfer are recipients of any disability benefit hereunder shall continue to receive their benefit from the fund established under this Article.

If, after such transfer, an employee becomes disabled or dies under circumstances which would have qualified him or any beneficiaries claiming through him for disability, death, widow's, or survivorship benefits payable under this Article had such transfer of employment not occurred, where such benefits are not payable under Article 14 or under the reciprocal provisions of Article 20, the employee or his beneficiaries shall be entitled to the benefits prescribed in this Article 9 from the fund established hereunder.
(Source: P.A. 81-1536.)

(40 ILCS 5/9-239) (from Ch. 108 1/2, par. 9-239)

Sec. 9-239. Group Health Benefit.

(a) For the purposes of this Section, "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, a minimum annuity, or a child's annuity on or after January 1, 1990, under Article 9 or 10 by reason of previous employment by Cook County or the Forest Preserve District of Cook County (hereinafter, in this Section, "the County").

(b) Beginning December 1, 1991, the Fund may pay, on behalf of each of the Fund's annuitants who chooses to participate in any of the county's health care plans, all or any portion of the total health care premium (including coverage for other family members) due from each such annuitant.

(c) The difference between the required monthly premiums for such coverage and the amount paid by the Fund may be deducted from the annuitant's annuity if the annuitant so elects; otherwise such coverage shall terminate and the obligation of the Fund shall also terminate.

(d) Amounts contributed by the county as authorized under

Section 9-182 for the benefits set forth in this Section shall be credited to the reserve for group hospital care and all such premiums shall be charged to it.

(e) The group coverage plan and benefits described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(Source: P.A. 86-1025; 87-794.)

(40 ILCS 5/9-241)

Sec. 9-241. Mistake in benefit. If the Fund mistakenly sets any benefit at an incorrect amount, it shall recalculate the benefit as soon as may be practicable after the mistake is discovered.

If the benefit was mistakenly set too low, the Fund shall make a lump sum payment to the recipient of an amount equal to the difference between the benefits that should have been paid and those actually paid, without interest.

If the benefit was mistakenly set too high, the Fund may recover the amount overpaid from the recipient thereof, either directly or by deducting such amount from the remaining benefits payable to the recipient, without interest. If the overpayment is recovered by deductions from the remaining benefits payable to the recipient, the monthly deduction shall not exceed 10% of the corrected monthly benefit unless otherwise indicated by the recipient. However, if (1) the amount of the benefit was mistakenly set too high, and (2) the error was undiscovered for 3 years or longer, and (3) the error was not the result of incorrect information supplied by the employer, the affected participant, or any beneficiary, then upon discovery of the mistake the benefit shall be adjusted to the correct level, but the recipient of the benefit need not repay to the Fund the excess amounts received in error.

This Section applies to all mistakes in benefit calculations that occur before, on, or after the effective date of this amendatory Act of the 99th General Assembly.

(Source: P.A. 99-578, eff. 7-15-16.)

Constitution of the State of Illinois

ARTICLE XIII

GENERAL PROVISIONS

SECTION 1. DISQUALIFICATION FOR PUBLIC OFFICE

A person convicted of a felony, bribery, perjury or other infamous crime shall be ineligible to hold an office created by this Constitution. Eligibility may be restored as provided by law.

(Source: Illinois Constitution.)

SECTION 2. STATEMENT OF ECONOMIC INTERESTS

All candidates for or holders of state offices and all members of a Commission or Board created by this Constitution shall file a verified statement of their economic interests, as provided by law. The General Assembly by law may impose a similar requirement upon candidates for, or holders of, offices in units of local government and school districts. Statements shall be filed annually with the Secretary of State and shall be available for inspection by the public. The General Assembly by law shall prescribe a reasonable time for filing the statement. Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office. This Section shall not be construed as limiting the authority of any branch of government to establish and enforce ethical standards for that branch.

(Source: Illinois Constitution.)

SECTION 3. OATH OR AFFIRMATION OF OFFICE

Each prospective holder of a State office or other State position created by this Constitution, before taking office, shall take and subscribe to the following oath or affirmation:

"I do solemnly swear (affirm) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of to the best of my ability."

(Source: Illinois Constitution.)

SECTION 4. SOVEREIGN IMMUNITY ABOLISHED

Except as the General Assembly may provide by law,

sovereign immunity in this State is abolished.
(Source: Illinois Constitution.)

SECTION 5. PENSION AND RETIREMENT RIGHTS

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.
(Source: Illinois Constitution.)

SECTION 6. CORPORATIONS

Corporate charters shall be granted, amended, dissolved, or extended only pursuant to general laws.
(Source: Illinois Constitution.)

SECTION 7. PUBLIC TRANSPORTATION

Public transportation is an essential public purpose for which public funds may be expended. The General Assembly by law may provide for, aid, and assist public transportation, including the granting of public funds or credit to any corporation or public authority authorized to provide public transportation within the State.
(Source: Illinois Constitution.)

SECTION 8. BRANCH BANKING

Branch banking shall be authorized only by law approved by three-fifths of the members voting on the question or a majority of the members elected, whichever is greater, in each house of the General Assembly.
(Source: Illinois Constitution.)

**IN THE
SUPREME COURT OF ILLINOIS**

JOHN O'CONNELL,

Plaintiff-Appellee,

v.

COOK COUNTY, *et al.*,

Defendants-Appellants.

On Appeal from the Appellate Court of Illinois

First Judicial District, No. 20-1031

There Heard On Appeal From The Circuit Court Of Cook County, Illinois

No. 20-CH-288

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**IN THE
SUPREME COURT OF ILLINOIS**

JOHN O'CONNELL,

Plaintiff-Appellee,

v.

COOK COUNTY, *et al.*,

Defendants-Appellants.

The undersigned, being first duly sworn, deposes and states that on January 10, 2022, there was electronically filed and served upon the Clerk of the above court the Brief, Index of Record and Appendix of Appellant County of Cook. On January 10, 2022, service will be accomplished by email and electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that thirteen copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Rebecca M. Gest

Assistant State's Attorney

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Rebecca M. Gest

Assistant State's Attorney