

**THE STATE IS NOT A GUARANTOR OF STATE PENSION FUND
OBLIGATIONS TO PENSION PLAN MEMBERS.**

The Pension Clause of the Illinois Constitution makes "participation in a public pension plan an enforceable contractual relationship [that] demands that the 'benefits' of that relationship 'shall not be diminished or impaired.'" *People ex rel. Sklodowski v. State*, 182 Ill. 2d 220, 228-29 (1998). The question has arisen whether the Pension Clause, or any other provision of State law, makes the State of Illinois the guarantor of pension plan obligations to plan members if a pension plan should run out of money. The answer is that debt obligation rests solely with the State's employee pension funds. The State itself is not a guarantor of that obligation.

On its face, the Pension Clause imposes upon the pension plans – not the State – the contractual obligation to pay State pensions: "Membership in any pension or retirement system of the State . . . shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Ill. Const., art. XIII, § 5. It is membership in the pension system that is the protected contractual relationship, and thus it is the pension system or plan which has the enforceable contractual obligation to pay pension benefits to its members.

Any obligation on the State to guarantee payment of pensions in the event a pension plan runs out of assets would have to be established, if at all, under Section 22-403 of the Illinois Pension Code. Section 22-403 expressly provides that "[a]ny pension payable under any law hereinbefore referred to shall not be construed to be a legal obligation or debt of the State . . . other than the pension fund concerned, but shall be held to be solely an obligation of such pension fund, *unless otherwise specifically provided in the law creating such fund.*" 40 ILCS 5/22-403 (emphasis supplied). Section 22-403 is thus clear that the State has no guarantor obligation "unless [such obligation is] specifically provided in the law creating such fund."

The Articles creating the five existing State employee pension funds do not "specifically provide" for such a guarantor obligation by the State. Each contains an "Obligations of State" provision substantially similar to Section 15-156 for the State Universities Retirement System ("SURS"), but the obligations referred to do not include guaranteeing payment of pensions by the pension funds in the event they run out of money. For example, Section 15-156 describes these obligations as follows: "Obligations of State. The payment of (1) the required State contributions, (2) all benefits granted under this system, and (3) all expenses in connection with the administration and operation thereof are obligations of the State of Illinois *to the extent specified in this Article.*" 40 ILCS 5/15-156 (emphasis supplied). *See also* §§ 40 ILCS 5/2-125; 40 ILCS 5/14-132; 40 ILCS 5/18-132. The key question, therefore, is what is elsewhere "specified in this Article"?

Article 15 specifies elsewhere in the Article that the State is to establish the fund, make contributions to the fund, and cause pensions to be paid from the fund – that is, the SURS employee pension fund – but nowhere states that if the fund does not have sufficient assets, the State is the guarantor that pension benefits will be paid. The Articles establishing the other State employee pension funds similarly specify that the State is to establish, make contributions to, and cause pensions to be paid from, their respective employee pension funds. And as with Article 15, none of them states that if the employee pension fund does not have sufficient assets, the State is the guarantor that pension benefits will be paid. Article 15, and each of the other State employee pension Articles, thus falls far short of containing a "specific provision" requiring the State to act as a guarantor of the pensions payable by the pension fund – which is the express requirement of Section 22-403.

The history of the "Obligations of State" provisions confirms that they could not have been intended to create a State guarantor obligation for payment of pensions. The "Obligations of State" provisions date from 1963, seven years before the Pension Clause became part of the Constitution. Prior to the Pension Clause, there was no contractual right to pension benefits even if those benefits were accrued under an existing mandatory pension. *Sklodowski*, 182 Ill.2d at 228 (Prior to the 1970 Constitution, when a pension plan was mandatory, "the rights created in the relationship were considered in the nature of a gratuity that could be revoked at will."). As a matter of law, therefore, in 1963 the "Obligations of State" provision could not have been intended, and in any event would not have been effective, to establish a State guarantor obligation for pensions.

The Illinois Supreme Court has held that elements of pension plan membership that were not enforceable contract rights before the adoption of the Pension Clause in 1970 did not become enforceable contract rights after its adoption unless expressly addressed by the Pension Clause. *See, e.g., People ex rel. Illinois Fed'n of Teachers v. Lindberg*, 60 Ill.2d 266, 275 (1975). The Pension Clause does not address whether the State has an obligation to be the guarantor for pensions. Thus, the "Obligations of State" language, which as a matter of law could not establish a State guarantor obligation for pensions when drafted in 1963, remains ineffective to establish such a guarantor obligation now.

Finally, no Illinois case holds that the State has a guarantor obligation to pay pensions if a pension fund runs out of assets. Numerous cases hold that participants in State employee pension funds have no vested contractual right to a specific level of pension funding during a fiscal period, only a contractual right to "receive the money due them at the time of retirement." *Lindberg*, 60 Ill.2d at 271; *see also, McNamee*, 173 Ill.2d 433, 442, 446 (1996); *Sklodowski*, 182

Ill. 2d at 231, 233; *Houlihan v. City of Chicago*, 306 Ill. App. 3d 589, 598 (1st Dist. 1999).

Moreover, although a number of these cases suggest, *in dicta*, that if facts established that the funds at issue were on the verge of default or imminent bankruptcy, there might be an unconstitutional impairment of benefits under the Pension Clause, in none of these cases does the court suggest, or do the parties argue, that in that event the State would have the obligation to pay pension benefits when due as a guarantor. Indeed, it appears that the reason the parties bringing such funding cases have been so intent on forcing the State to fund pensions at a particular level annually is they assume any shortfall in the ability of the funds to pay benefits when due will not be an obligation of the State, but rather an obligation solely of the pension fund.