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DENVER BOARD OF ETHICS DIGEST OF SELECTED OPINIONS July 1– December 31, 2010

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between July 1 and December 31, 2010 in response to fact-specific requests for advisory opinions or complaints. **They should not be used as conclusive guidance for situations where the facts may differ.** Please contact the Board of Ethics to discuss any specific issues you may have.

Case 10-19 (subsequent employment)

An employee in the Office of the Controller who administers the city's payroll system requested an advisory opinion and/or waiver. She had been offered and has accepted a position with a payroll administration company ("the company") that provides computerized payroll services to the City and County of Denver. She planned to leave city government at the end of July 2010. She advised the Board of Ethics that

My role at the company will be an Industry Lead who will be responsible for providing industry expertise related to the (new) Government/Public Sector vertical that has been established within the organization. I will assist existing customers, new customers and prospective customers with guidance around finding a solution that will meet the needs of their unique organization(s).

The Board of Ethics determined that she was "in a position to take direct official action" regarding the same company.

The employee said that she wished to work during August of 2010 approximately 10 hours per week after she leaves city government to finish some large and sensitive city

projects with the company, an example of which is the consolidation of the DIA payroll platform with the city's payroll platform. The company offered to allow her to continue to assist the Citywide Payroll Division in an advisory role, to be paid for by the company, not the city. She advised the Board of Ethics that the city's lengthy hiring process for on-call employees and city budgetary limitations would not allow her to be paid by the city for this additional work within a reasonable time.

She also indicated that after she joins the company she will not negotiate or administer the contract between Denver and the company.

Two separate issues are raised by this case, both of which involve Section 2-64(a) of the Code of Ethics:

Sec. 2-64. Subsequent employment.

The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.

(a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

The first issue is whether the employee would violate Section 2-64(a) by going to work for the company without waiting 6 months after she leaves her job with the city. The Board of Ethics concluded that her employment by the company without waiting for 6 months after she leaves city government will violate Section 2-64(a) because she took direct official action regarding the company because she administered the company's contract with the city.

The second issue is whether the employee would violate Section 2-64(a) or any other section of the Code of Ethics by working on a part-time basis for the city after she retired from the city. Section 2-64(a) specifically applies to employment "outside of the city government" and, by extension, permits subsequent employment inside the city government. In Cases 04-21 and 06-26 the Board of Ethics approved subsequent employment with the city on a contract basis after retirement from the city. This case, however, is somewhat different in that the company proposed to pay her for the part-time work that she would do for the city. The Board concluded that her proposed part-time work for the city would not violate 2-64(a), but that having the company pay for her work for the city would be or would appear to be a conflict of interest for her, for the company, and for the city (although not a conflict specifically prohibited by Section 2-61 of the Code of Ethics).

The Board, however, determined to grant the employee a waiver, pursuant to Section 2-54(f) of the Denver Code of Ethics to permit her to: 1) work for the company without

waiting for 6 months after she leaves city government and 2) be paid by the company for work she does to finish up certain important projects for the city, so long as she will not do any work for the company regarding the Denver-company contract for the first 6 months after she leaves city government, except for the limited work that she will do to finish the ongoing projects. In addition, the Board recommended that she should avoid doing any other type of work regarding the City and County of Denver for the first 6 months.

The Board determined that this waiver is in the best interests of the city as it will allow the completion of these important projects for the city.

Case 10 – 20 (conflict of interest)

An administrator of youth programs for the Office of Economic Development (OED) requested an advisory opinion. One of the programs that she administers is a summer work-based mentoring program for young people. In 2009 the program served more than 1100 youth. The administrator's husband's company, has participated in this program since the late 1990s, several years before the administrator began to work for OED.

The city pays wages and training costs for the young people from federal and state grants. The employers obtain the benefit of the young people's work for the employers; however, they must also provide training, supervision, etc. The employers do not receive any funds for participating in the program.

The administrator did not select her husband's company to participate nor did she assign the young people to the company. OED held a recruitment event in July 2010 and the youth chose which employers they wanted to interview with; the employers determined and made job offers to the youth that they believed were the most excited and interested in the work-based mentoring opportunity. The administrator's husband was not able to participate in the recruitment event, however, he did have an operations manager interview and make the selection and offer to two young people who were selected and they will work approximately 160 hours for the husband's company during the summer.

The Board of Ethics was not able to find any violation of the Code of Ethics or any type of impropriety in this situation because:

- The administrator was not involved in appointing or assigning the young workers to her husband's company;
- She did not select her husband's company to be involved in the program. The company had been involved for several years before she went to work for OED.
- The program will not pay any funds to the husband's company.

In order to avoid any appearance of impropriety, however, the Board recommended that the administrator should delegate to a colleague in OED all responsibility for reviewing or signing documents related to the young people assigned to her husband's company, if

any, and any other responsibility for overseeing those relationships in 2010 and any future years.

Case 10- 21 (no jurisdiction)

A complaint was filed by a real estate professional from another state who was in Colorado on business. She was at Denver International Airport, trying to pick up her father, who was arriving on Frontier Airlines. She said that she:

...stopped in front of Frontier Arrivals and was immediately told by a Denver police officer to leave. He wrote me a ticket because I could not leave fast enough. He threw my insurance at me in the car and refused to tell me his name....He continued to make rude comments...I then circled the airport and then parked in the garage. The officer came up with another officer...He said I was parked incorrectly and needed to re-park my car. The car was parked fine and I asked him why he was treating me like this and continually saying derogatory things. He said "I get paid to harass you..."

The ticket for impeding traffic required the citizen to pay \$100 by mail or to appear in court in October 2010. She paid the ticket via the internet and it is now a closed case. The defendant was charged with the 3-point 54-160 Impeding Traffic violation. By paying online she agreed to plead guilty to the standard plea offer which carries 1-point.

The Board of Ethics dismissed this case pursuant to sections 2-56(6)(a) and (b) of the Code of Ethics because the Board of Ethics has no jurisdiction over these issues and because the alleged violation, if true, would not constitute a violation of the Code of Ethics. There is no section of the Code of Ethics that prohibits unprofessional or rude or insulting comments by a police officer. The Board, however, advised the citizen that the alleged statement that "I get paid to harass you," if it could be proven, was unprofessional misconduct and that she might wish to notify the Office of the Independent Monitor and/or the Commander in the officer's police district of her complaint.

Case 10 – 22 (gifts)

On behalf of the Police Department, a lieutenant requested an advisory opinion, stating:

Today a homeless citizen came into Denver Police Headquarters and wanted to donate a painting that he had made. One of the secretaries accepted the painting and the citizen said it was titled "Unity in the Community." The secretary took his name and a contact number and told the citizen that she would have to check to see if we could accept the painting. He said that he was donating it to us as a symbol of cooperation between the community and the police department. Can we accept this? Do we need to fill out any paperwork if we can accept it?

Section 2-60 of the Denver Code of Ethics regulates the acceptance of gifts. In particular, Section 2-60(c) provides that "it shall not be a violation" of the Code of Ethics:

for an officer, official or employee to solicit donations to the city or to solicit or redirect donations for charitable purposes...provided that the soliciting person, or a member of the soliciting person's immediate family does not keep or use the gift or receive any monetary benefit therefrom.

Since the citizen's intent was apparently to donate his painting to the city and not to an individual city employee, the Board of Ethics concluded that there will be no violation of the Code of Ethics for the painting to be accepted on behalf of the city and that the citizen should be thanked for his generous gift.

Executive Order 134 requires that any gift to the city over the value of \$2500 must be disclosed to the City Clerk's Office by the department or agency in question. If the value of the gift is less than \$2500, the gift to the city does not need to be disclosed.

Case 10 – 23 (confidential information)

A representative of the Denver Police Protective Association (PPA) filed a complaint concerning the Independent Monitor (Monitor). According to the 2004 ordinance which established the Office of Independent Monitor (OIM) and also the Citizen Oversight Board (COB), Denver Revised Municipal Code 2-371, et seq., the OIM:

shall actively monitor and participate in certain investigations of uniformed personnel; make recommendations to the Manager of Safety regarding administrative action, including possible discipline, for such uniformed personnel; make recommendations regarding policy issues and address any other issues of concern to the community, the members of the Citizen Oversight Board.... the manager of safety, the chief of police or the undersheriff...

The PPA representative specifically complained about the Monitor's alleged breach of confidentiality regarding an April 2009 case of alleged excessive force by two Denver police officers in which one young man was injured. Some of the incident was captured by a city-operated HALO (High Activity Location Observation) camera

The Internal Affairs Bureau of the Police Department investigated whether excessive force was used by one or both of the officers and also whether one or both of the officers did not tell the truth during the investigation. Manager of Safety Alvin LaCabe resigned approximately June 1, 2010 without having resolved the disciplinary cases and the Mayor then appointed Ronald Perea as Manager of Safety. After the Monitor disagreed with some findings by the Division Chief of Patrol, Mr. Perea reviewed the entire investigation and decided on July 20, 2010 to impose minor discipline on both officers and the case was closed by the Internal Affairs Bureau.

The Monitor disagreed with that decision, believing that both officers should be dismissed. He communicated his disagreement through posting a 4-page written report on the OIM website on August 13, 2010; by discussing the case in executive session with the

COB on July 29, 2010 and by submitting to a television interview (from Denver) on Good Morning America on August 16, 2010. The Monitor did not disclose the names of the two officers in his written report or in his Good Morning America interview.

After its discussion with the Monitor, the COB issued a letter on August 2, 2010, agreeing with the Monitor that “the unwarranted use of force and departing from the truth are serious matters that require stern consequences, which were not reflected in the type and level of discipline imposed in this case.”

The PPA representative also complained that the Monitor made an Open Records Act request for portions of the Police Department’s internal investigative file, including a link to the HALO video of the incident in question, saying that, since the Monitor already had full access to that material, “his request would appear to have an ulterior motive.” The PPA representative also said that “a near identical Open Records request was submitted” to the Records Manager of the Department of Safety by two local media reporters, which he characterized as the Monitor’s “encouraging the media’s involvement” and that the Monitor “directed” the reporters in their efforts.

The PPA representative also stated that “Orders of Disciplinary Action issued by the Manager of Safety are personnel records and are, therefore, not subject to disclosure by either the Manager of Safety or the Monitor pursuant to ...Colorado Revised Statutes 24-72-202(4.5) (a portion of the Colorado Open Records Act - CORA).”

After considerable media and public discussion about this disciplinary case, Mr. Perea resigned as Manager of Safety on August 24, 2010. The PPA representative filed his complaint with the Board of Ethics on September 7, 2010.

The Board of Ethics concluded that the only section of the Denver Code of Ethics which is involved in this matter is Section 2 – 68, which was adopted by City Council on November 30, 2009:

Sec. 2-68. Use of confidential records

No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties , except in the performance of official duties or as required by law or court order.

The Board of Ethics does not have any jurisdiction over any other related issues.

The Board of Ethics concluded that it does not believe that CORA applies to the Monitor in this situation. The stated policy of CORA is “that all public records shall be open for the inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.” Section 24-72-204(3)(a) provides that “the custodian shall deny the right of inspection of...personnel files...” However, the Board of Ethics does not believe the Monitor can be deemed to be the “custodian” of personnel files developed by the Police Department or the Manager of Safety.

After reviewing a written response from the Monitor, the Board of Ethics decided that it had enough information to decide this case without a public hearing and the Board dismissed the complaint because:

- The Monitor has a responsibility established by ordinance to “make recommendations regarding policy issues and address any other issues of concern to the community;”
- Allegations of excessive force by Denver police officers and whether the police disciplinary process functions well are matters of great concern to the Denver community and the media, particularly in the case in question;
- The Monitor’s communications and actions were “in the performance of official duties” and, therefore, did not violate Section 2-68 of the Code of Ethics;
- The ordinance regulating the Independent Monitor does not prohibit the Monitor from making additional reports beyond his annual report. In fact, the Monitor is required by Section 2-375(c) to provide “in addition to the annual report...an ongoing status report which shall be available to the public and which shall include, among other things...recommendations regarding...the sufficiency of investigations and appropriateness of disciplinary sanctions, if any.” The ordinance does not specify the form or timing or manner of publication of such a “status report;”
- The Monitor did not disclose the names of the officers in his website report or in his interview with Good Morning America;
- The Monitor’s discussion with the COB took place in executive session;
- There is no evidence that the Monitor prompted reporters to initiate an Open Records request or otherwise to publicize the story. Even if there were any such evidence, that would not violate Section 2-68.

Cases 10-24 and 25 (confidential information)

Two separate city employees filed requests for advisory opinions on similar topics. The first employee was disturbed that someone in the human resources office had e-mailed to everyone in the work group a list of personal holidays used or not used by each employee for some administrative purpose. The employee thought that such information should be confidential and should not be shared with other employees.

The second employee was upset when an executive assistant at a staff meeting publicly congratulated another employee in the work group by name for enrolling in the Wellness Challenge recently established by the carriers that offer health insurance to city employees. The Wellness Challenge is a premium discount program for city employees who complete an on-line health assessment and complete a physical activity program. The website says that “all activities are voluntary and confidential.”

Neither of the two employees indicated that they believed that the city employees who revealed such information acted maliciously or that anyone was harmed by the revelations. Neither employee wished to file a complaint against anyone. Rather, they want to understand what use of confidential information is permitted and what is not. One

employee suggested there should be an educational program about the boundaries of “confidential” information.

Both of these requests concern how the Board of Ethics will interpret Section 2-68 of the Code of Ethics, which was passed by City Council on November 30, 2009:

Sec. 2-68. Use of confidential records

No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties , except in the performance of official duties or as required by law or court order.

Some “information or records” are clearly required to be kept confidential, usually as a result of separate laws, such as:

- Health records
- Social Security numbers or information
- Sealed court records
- Income tax records
- personnel files
- Trade secrets
- Attorney-client communications

The Colorado Open Records Act (CORA), Colorado Revised Statutes 24-72-200.1 through 24-72-205, applies to the City and County of Denver and regulates what public records must or may be made available by “the custodian of any public records” to a member of the public upon a proper request. CORA, however, does not appear to regulate non-written “information.” In addition, CORA does not address if and when information can be shared with persons who are not requesting public records as a member of the public, such as co-workers or acquaintances.

The City and County of Denver’s only ordinance relating to “public records” (2-271 and 2-272) prohibits disclosure of home addresses and telephone numbers of city officers, officials and employees “so that they may perform their duties without fear of reprisal, retribution or intimidation.”

The Board of Ethics decided that these requests provide a good opportunity for the Board to begin to discuss with city personnel the meaning and purpose of section 2-68. In general, the Board of Ethics believes that:

- Section 2-68 applies to information as well as written “records”
- Section 2-68 applies to revealing information or records to co-workers or friends or family members or government customers or other members of the public and not only to members of the public making a CORA records request
- City personnel should use decorum, professionalism and respect for privacy and not reveal personal information about co-workers or customers to anyone “except in the performance of official duties or as required by law or court order.”

- On the other hand, common sense and good judgment should allow city personnel to communicate respectfully, for example, about a co-worker's illness in order to show support.
- Additional interpretation of Section 2-68 will be developed by the Board of Ethics through future requests for advisory opinions or complaints.
- An important fact to consider in each case, among many, is whether the person has voluntarily waived confidentiality or not. Regarding participation in the wellness program, for example, it would be important to know whether the employee who had enrolled had voluntarily communicated this to others or not.

The Board also decided that it will attempt to initiate a city working group and/or a forum for city employees to discuss in more detail what should be the obligations of all city personnel regarding confidential information and records.

Case 10 – 26 (gifts, travel expenses)

A captain in the Denver Sheriff Department requested an advisory opinion and/or waiver. The captain has responsibility for working with a private toxicology laboratory to perform alcohol and drug testing for inmates that participate in an alternative sentencing program.

Denver has had a contract with the laboratory since 1998. The captain has been responsible for the alternative sentencing programs for the last two years. The contract with the laboratory will expire on December 31, 2010. The captain said that:

We reached out to the laboratory regarding some proposed changes and asked a representative to come to Denver. The laboratory proposed that we visit their laboratory in California to see their entire operation, review their productions and receive the necessary training to read their reports and understand their process.

The laboratory offered to have the captain and a technician from the Sheriff Department travel to the laboratory with "all travel costs" to be paid by the laboratory.

The captain advised the Board of Ethics that she will be one of the chief decision-makers for the Sheriff Department in determining the status of the contract with the laboratory, including whether to re-negotiate it or to request the laboratory and other companies to respond to a request for proposals. She also told the Board that the Sheriff Department has no funds available to pay for her trip, because it is facing a large budget shortfall.

Gifts, including "travel expenses and lodging" are regulated by Section 2-60 of the Code of Ethics:

Sec. 2-60. Gifts to officers, officials, and employees.

The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.

(a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor...

(6) Travel expenses and lodging...

(b) Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client...

(7) Reasonable expenses paid by non-profit organizations or other governments for attendance at a convention, fact finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the city...

Since the captain has overall responsibility for the alternative sentencing programs for the Sheriff Department, including drug and alcohol testing, the Board of Ethics determined that she has "direct official action" power regarding the laboratory, as defined in Section 2-52(b) of the Code of Ethics. Therefore, she would violate Section 2-60(a) by accepting travel and lodging expenses, unless one of the exceptions in Section 2-60(b) applies or unless the Board grants a waiver pursuant to Section 2-54(f) because a waiver would serve the best interests of the city. The travel expense exception in 2-60(b)(7), however, only applies to "reasonable expenses paid by non-profit organizations or other governments" and not to a for-profit company like the laboratory. Since the technician who would also go on the trip is not in a position to take direct official action regarding the laboratory he would not violate the Code by accepting travel expenses and lodging from the laboratory.

The Board, however, granted the captain a waiver because the best interests of the city, particularly public safety, will be served by allowing her to travel to the laboratory to learn about new techniques available for drug and alcohol testing by on-site observation and discussion. The Board limited the waiver to moderately-priced travel and lodging expenses.

Case 10 – 27 (conflict of interest, outside employment)

A recently appointed Deputy Director of an agency requested an advisory opinion. Before his appointment, he had been involved in a family real estate firm. He will generally be responsible for several housing programs at the agency, including anti-foreclosure programs and Troubled Asset Recovery Programs.

A few months ago, he and a group of other real estate colleagues began to discuss forming a “housing group to raise private funding commitments to purchase bulk inventory of foreclosed and failed short sale properties in an effort to provide for-sale and rental single-family homes of several thousand homes in several states.” He advised the Board of Ethics that, as soon as he began to consider his possible appointment, the idea of the housing group was put on hold until he could determine if there would be a prohibited conflict of interest.

He advised the Board that, if he goes forward with the housing group, “the group does not anticipate partnering, contracting with, or competing with the City and County of Denver” or requesting or obtaining any loans from the agency. The group would anticipate bidding on groups of approximately one thousand homes in several states at a time and the group could decline to bid on any groups of homes that included any homes within the City and County of Denver.

Regarding the family real estate firm, he told the Board that he is in the process of finalizing two real estate transactions and that, as soon as they are finalized, he will not have any involvement in transactions with the firm so long as he is with the city agency.

The first issue in this case is that Section 2-63 of the Code of Ethics requires written approval by any city employee’s appointing authority of any outside employment or outside business activity:

Sec. 2-63. Contemporaneous or outside employment.

The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.

(a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.

(b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics..

The second issue concerns conflicts of interest, which are regulated by Section 2-61 of the Code of Ethics:

Sec. 2-61. Conflict of interest while employed.

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,

(a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:

- (1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter;
- (2) He, she, a spouse, a domestic partner or minor children solely or aggregated together, a business associate or an employer owns or own one (1) percent or more, or a member of the immediate family other than a spouse, domestic partner or minor children own or owns five (5) percent or more, of another party in the matter;
- (3) He or she, a member of the immediate family, a business associate or an employer is an officer in another party in the matter;
- (4) He or she, a member of the immediate family, a business associate or an employer is directly involved in obtaining the city's business for another party in the matter;
- (5) He or she, a member of the immediate family, a business associate or an employer is directly involved in negotiating the contract or preparing the bid, proposal, response to a request for qualifications, or similar document for another party in the matter, other than in a purely clerical capacity; or
- (6) A member of his or her immediate family performs more than a nominal portion of the work in the matter, or supervises or manages more than a nominal portion of the work.
- (7) He or she or a member of his or her immediate family participated personally in providing legal representation or lobbying for another party in the matter or owns five (5) percent or more of a law firm or lobbying firm representing another party in the matter.

(b) For purposes of this section, business associate means a person or entity with whom an officer, official or employee or a member of his or her

immediate family is a partner or a co-owner of a business in which the business associate and the officer, official or employee or a member of his or her immediate family each own at least one percent of the business...

(f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.

(g) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.

The Board determined that:

1. The Deputy Director is not prohibited by the Code of Ethics from participating in the housing group
2. The housing group would be more than a passive investment on his part. Therefore, if the Deputy Director decides to proceed with the housing group, he must obtain written approval from the Mayor's Office for the outside business activity, pursuant to Section 2-63 of the Code of Ethics and should probably also discuss it with the Director of the agency. He and the housing group should have a very clear agreement among themselves that the group will not partner with, contract with, or compete with the City and County of Denver or request or obtain any loans from the agency.
3. The group should not bid on or be involved with any group of homes that include any homes within the City and County of Denver, as that would be a conflict of interest due to competition with homes involved in the agency's programs.
4. If the housing group would attempt to transact any business with OED, he would be required to abstain from any involvement pursuant to Section 2-61(f) of the Code of Ethics. However, since has such a high position, which is related to housing, at the agency, such an attempt would seriously compromise the necessary objectivity and fairness of the agency, which could not be satisfactorily resolved by his recusal and delegation to someone else at the agency.
5. He should withdraw as quickly as possible from all transactions in the family real estate firm and that, if the family firm proposes to transact any business with the agency, he must disclose and completely abstain from any agency involvement in such a transaction, pursuant to Section 2-61(f).

Case 10 – 28 (gifts)

A Deputy Chief of Police requested an advisory opinion about whether it would violate the Code of Ethics for the Police Department or individual police officers and employees to receive free fifteen-minute Trigger Point Therapy Massages from an organization

called Foundation for Wellness Professionals, through its Massage a Hero program. The Deputy Chief said that the program “would be a benefit to our crew and staff while also helping build morale.”

A local representative of the foundation said that they emphasize preventative care and estimated that a one-hour Trigger Point Therapy Massage would generally cost between \$40 and \$60 for a paying client.

The only section of the Denver Code of Ethics which pertains to this issue is the gift section:

Sec. 2-60. Gifts to officers, officials, and employees.

The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.

(a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:

- (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation...
- (7) Any reduction in price or any discount that is not similarly available to all city officers, officials, and employees on the same terms...(emphasis added)

The definition of “direct official action” in Section 2-52(b) of the Code of Ethics includes “enforcing laws,” which is what police officers do all day long. In addition, the City and County of Denver has an existing business or regulatory relationship with all residents or taxpayers of Denver. Therefore, assuming that the foundation and/or the individual massage practitioners, are residents or taxpayers of Denver, free massages to police officers or employees would be gifts prohibited under section 2-60(a).

However, the Board determined that 15-minute free massage services should be allowed as an exception as follows:

Section 2-60(b) Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client:

- (5) Unsolicited items of trivial value. "Items of trivial value" means items or services with a value of twenty-five dollars (\$25.00) or less, such as inexpensive tee shirts, pens, calendars, books, flowers, or other similar items;..

The Board decided that the proposal by the massage practitioners does not seem to violate the purpose of section 2-60, which is "to avoid special influence by those who give gifts to city officers, employees or officials."

If the Police Department wishes to accept this offer, the Board recommended that the Department should put a few restrictions around the program such as:

- Confidentiality should be maintained
- Only one free massage per officer or employee
- There should be no obligation or pressure on the individual officers or employees to continue massage or any other treatment on a paid basis.

Case 10 – 29 (lack of jurisdiction)

An inmate at the Downtown Detention Center filed a complaint against a child welfare caseworker, stating that the caseworker was "overzealous" in a child welfare investigation that she was performing concerning children of the inmate's former fiancée and that the caseworker contradicted a judge's order or statement which the inmate believed permitted him to return to the former fiancée's home. Apparently, a Denver county judge at a preliminary appearance released the inmate on bond on a pending charge of misdemeanor child abuse and told him that he could return to the home. The caseworker later forbade him to return to the home. It is not clear whether that judge at the preliminary appearance was aware of the investigation being performed by the caseworker.

The issues raised in this complaint are not covered by the Denver Code of Ethics. The inmate and/or his attorney could and should have raised the issue of returning to the home with the judge handling the criminal case against him.

The Board of Ethics dismissed this complaint pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics, because the Board has no jurisdiction over this type of issue and because the alleged violation, if true, would not constitute a violation of the Code of Ethics.

Case 10 – 30 (outside employment)

An employee at Denver International Airport who works in ground transportation as a Landside Service Agent requested an advisory opinion. The employee expedites the flow of air passengers, visitors and vehicles inside the terminal at DIA and on the outside of the 5th level of the terminal.

The employee wishes to obtain an outside job with an event transportation management company, at times other than his DIA work hours. If approved, he would work for the company as a “meeter-greeter” for groups arriving at DIA who had contracted or “pre-booked” with the company for services, including ground transportation. Most of these groups would be for conferences or conventions in Colorado. The employee and others would direct or escort members of the groups to buses or limousines that have already been pre-booked in advance.

The employee has no involvement in and no direct official action authority over permitting or selecting drivers or transportation or other companies at DIA. He is not able in his city job to steer or encourage passengers to use company vehicles, because the vehicles are only available for those conferences or conventions that have pre-booked them for their exclusive use. The employee advised the Board of Ethics that he does not have any authority over where vehicles may or may not park at DIA or any ability to ticket vehicles for improper parking.

Outside employment is regulated by Section 2-63 of the Code of Ethics, the purpose of which is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity. Pursuant to Section 2-63, no city employee can engage in proposed outside employment unless he or she receives written approval from the appointing authority on an annual basis.

Since the employee has no direct official action power regarding the company or any other transportation company at DIA, the Board of Ethics determined that there is not a conflict of interest that would be prohibited by Section 2-61 of the Code of Ethics (regarding conflicts of interest).

The Board emphasized that, if the employee obtains approval from his appointing authority, he must not do any type of work for the company during his city work time and must not use any city resources for his outside employment. The Board also recommended that, if he obtains approval from his appointing authority, the employee and the company should agree that he can only work as a meeter-greeter inside the DIA terminal and not beyond the outer doors of the terminal, so that no one would get the unfounded impression that he might be improperly using his city position to steer passengers to certain buses or limousines.

Case 10 – 31 (supervision of relatives)

A division chief and a major in the Denver Sheriff Department submitted a request for an advisory opinion and/or waiver. The major was recently assigned as one of two Deputy Sheriff Majors to the Downtown Division of the Denver Sheriff Department. His primary focus is on administrative matters at the Downtown Detention Center (DDC), the sheriffs operation at the Lindsay-Flannigan Courthouse and the sheriffs operation at Denver Health Medical Center.

The major's son is a deputy sheriff at the Denver County Jail. He has expressed an interest in transferring to the Downtown Division where his primary duties would focus on the general supervision of inmates.

A large number of Sheriff personnel and also inmates were transferred in April 2010 from the Denver County Jail on Smith Road to the DDC, when the new DDC opened.

Supervision of immediate family members (the definition of which includes son) is regulated by Section 2-59 of the Code of Ethics:

Sec. 2-59. Employment and supervision of family members.

The purpose of this section is to avoid favoritism by city officers, employees or officials to their immediate family members...

(b) No officer, official, or employee shall supervise or be in a direct line of supervision over a member of his or her immediate family. If an officer, official, or employee comes into a direct line of supervision of a member of his or her immediate family, he or she shall have six (6) months to come into compliance or to obtain a waiver pursuant to section 2-54.

(c) When waivers from this section are sought so that a member of the immediate family may be hired or may be in the direct line of supervision, it is the intent of the council that the board of ethics not unreasonably withhold waivers. Examples of circumstances which might result in a waiver include, but are not limited to:...

(3) The family member who would be in the line of supervision was already working in the agency before the officer, official, or employee came into the line of supervision, and the officer, official, or employee can and will abstain from participating in any personnel actions involving the family member.

(d) The phrase "direct line of supervision" shall mean the supervisor of an employee and the supervisor of an employee's supervisor.

The Board of Ethics determined that the placement of both the major and his son at the DDC will not violate Section 2-59 of the Code of Ethics, because there will be two levels of supervision between the father and his son and, therefore, the major will not supervise and will not be in a direct line of supervision over his son. Therefore, no waiver is required in this situation. However, the Board recommends that, in order to avoid the appearance of impropriety, if Deputy Sheriff Horner is transferred to DDC:

- The major should abstain from any involvement in any personnel action (positive, negative or neutral) regarding his son and he should notify others at DDC that he will do so;

- There should always be at least 2 levels of supervision between the major and his son. If this situation were to change, such as by a promotion of the son, the father and/or the son should return to the Board of Ethics for advice and/or a waiver regarding the changed circumstances;
- In the decision on whether to transfer the son to the DDC the father should not be the decision-maker and that the decision should be based on whatever criteria the Sheriff Department would normally use in considering such a transfer:

Case 10 – 32 (gifts – travel expenses)

A City Council member requested an advisory opinion and/or waiver. He had been invited to attend an organizational meeting in San Antonio, Texas of the advisory board of a new organization.. The organization is a nationwide network of elected and appointed government officials committed to juvenile justice policy reform and advocacy.

Neither City Council nor the district Council office has sufficient budget to pay for the airfare to this meeting. An airline company has offered to donate airfare to and from the meeting for the Council member. City Council will need to vote in the next few months on a new lease for that airline company at Denver International Airport, which is currently being negotiated. Therefore, the Board determined that the Council member is “in a position to take direct official action” regarding the airline company, because the City Council must vote on all leases of city property, including gates and other facilities at DIA. The Board of Ethics, as a result, determined that for the Council member to accept airfare from the airline company would violate Section 2-60(a) of the Denver Code of Ethics:

Sec. 2-60. Gifts to officers, officials, and employees.

The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.

(a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:

- (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation...
- (6) Travel expenses and lodging;

None of the exceptions listed in Section 2-60(b) apply to this situation.

The Board considered whether to grant a waiver, which would allow the Council member to accept airfare from the airline, but the Board decided not to do so. Although the Board understands that the work of the new organization will be very important and beneficial, the Board determined that that was outweighed by the possible appearance that the gift from the airline could influence the vote regarding the city lease to the airline, even in the event that the Council member recused himself from that vote. The lease is also a very important issue for the city.

The Board encouraged the Council member to look for another donor to pay the airfare that would not pose this conflict of interest. Board members suggested a number of other organizations that possibly might be able to contribute the necessary funds, without the issue of a conflict of interest.

Cases 10 - 33 through 10 – 39

A former resident of the Denver area filed complaints concerning five members of the Denver Police Department and two former Assistant City Attorneys. Her allegations were that she was racially-profiled in a traffic stop in mid-2008, received obscene insults from the traffic officer, was not properly advised of her rights, was defamed by improper release of information regarding her traffic ticket and lost her vehicle by an improper use of the public nuisance abatement process.

The Board of Ethics dismissed all of these complaints because Section 2-56(3) of the Denver Code of Ethics provides that the Board is “prohibited from accepting complaints or inquiries about actions that took place more than two years prior to the date of filing” and pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics, because the Board has no jurisdiction over these types of issue and because the alleged violation, if true, would not constitute a violation of the Code of Ethics.

In addition, the Board noted that the complaining party placed some or all of these issues before the Internal Affairs Bureau of the Denver Police Department, the Denver County Court (regarding the traffic ticket and the vehicle impoundment) and the United States District Court, all of which have more appropriate jurisdiction than the Board of Ethics over these issues.

Case 10 – 40

The Board received a request for an advisory opinion from a Senior Management Analyst for the Office of Economic Development. She had been invited to attend and participate in a series of meetings as a member of a National Science Foundation (NSF) Visiting Committee. Her travel expenses would be paid by South Carolina Advanced Technology Education Center (SCATE Center). She wished to know if her acceptance of the travel expenses from the SCATE Center will comply with the Code of Ethics.

She advised the Board of Ethics that:

from 10/20/2008 to 2/02/2009, the South Carolina Advanced Technology Education Center (SCATE) had a \$5,300 contract with WIRED at Metro Denver EDC to provide technical assistance to the community colleges in the metro Denver region.

The employee had been the administrator from 2006 through early 2010 on loan to the Metro Denver Economic Development Corporation for the Workforce Innovation in Regional Economic Development (WIRED) Initiative.

SCATE Center is a non-profit organization.

In responding to another request for an advisory opinion in March 2009 from the same employee, the Board determined:

You do take “direct official action” regarding contracts with WIRED sub-grantees because you “administer” the contracts, which is part of the definition of “direct official action” in Section 2-52(b) of the Denver Code of Ethics.

Section 2-60(a) of the Denver Code of Ethics provides:

Sec. 2-60. Gifts to officers, officials, and employees.

The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.

- (a) Except when acceptance is permitted by paragraph (b) below, it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:

- (6) **Travel expenses and lodging;**

Section 2-60(b), however, provides several exceptions, including:

2-60(b) Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client...

- (7) Reasonable expenses paid by non-profit organizations or other governments for attendance at a convention, fact finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the city...

The Board of Ethics determined that, because of her senior position in WIRED and OED, she was or is "in a position to take direct official action" regarding any past, current or future agreements or contracts or grants between Denver and SCATE Center.

However, the Board of Ethics determined that it would not violate the gift section of the Code of Ethics for her to accept travel expenses from SCATE Center because it is a non-profit organization, which would make this a permitted exception pursuant to section 2—60(b)(7) of the Code of Ethics.

Case 10 – 41

A Business Development Associate II in the Youth Services Division of the Office of Economic Development (OED) requested an advisory opinion. He develops employment and community educational opportunities for 14 - 21 year-old young people under various federal, state and local funded programs. He was appointed by Governor Ritter in August 2009 to serve as an unpaid member of the 20-member State Rehabilitation Council (SRC), which oversees the state Division of Vocational Rehabilitation (DVR). OED does not receive any funds from DVR and the employee does not have any role in negotiating, administering or distributing any DVR or DHS funds or contracts with OED.

All of the members of the SRC have been asked to "meet with their legislators to discuss the value of services that DVR creates, including the matching funds and other benefits that supplement the (State) General Funds." Presumably this request has been made to the SRC members because of the state's serious budget crisis which the legislature will need to deal with and because a number of new legislators have just been elected.

The Board of Ethics determined that, because the employee does not have any role in negotiating, administering or distributing any DVR or DHS funds or contracts with OED, he will not have an impermissible conflict of interest if he communicates truthfully as a citizen volunteer about vocational rehabilitation to members of the legislature or by serving as a member of the SRC. The Board, however, recommended that, if the SRC ever considers any proposed grant or contract with OED, he should abstain from any involvement in that issue as an SRC member and he should not be involved in negotiating, distributing or administering any such grants or contracts for OED.

