January 1-June 30, 2002

Board of Ethics
January 1-June 30, 2002

Digest of Advisory Opinions
January 1, 2002 through June 30, 2002

Case 02-1

A Fire Department employee requested an advisory opinion or a waiver concerning whether an employee could accept travel and lodging expenses. A manufacturer of material contained in equipment purchased by the Fire Department sponsored a seminar on the east coast where the equipment would be demonstrated and discussed. The employee is in a position to recommend for or against contracts and for or against the selection of vendors for equipment purchased for use by the Fire Department. The sponsor of the seminar does not have any direct business relationship with the city; however, the city does purchase from vendors several types of equipment containing materials manufactured by the sponsor.

The Board of Ethics concluded that acceptance by the employee of travel and lodging expenses from the manufacturer would violate 2-60 (a) of the Code of Ethics because the employee is in a position to take direct official action with regard to the manufacturer's materials and because the city has an indirect business relationship with the manufacturer.

The Board decided not to grant the requested waiver. The Board stated that "the best interests of the city are served if waivers are not routinely requested and not routinely granted," although the Board indicated that the Board is prepared to consider granting waivers in "emergency, unusual or exigent circumstances."

Case 02-2

The Police Department requested the Board of Ethics to review the department's written policies and procedures regarding outside employment. The Board concluded that the department's policies and procedures comply with Section 2-62 of the Code of Ethics which requires written approval of an employee's appointing authority for any outside employment or other business activities.

Case 02-3

The Fire Department requested an advisory opinion regarding travel and lodging expenses. The issue was whether two employees could travel to Portland, Oregon, with travel and lodging expenses to be paid by the Regional Transportation District. The employees were to inspect the light rail system in Portland and study how that system deals with a number of fire safety issues currently being reviewed with respect to the T-Rex light rail project in Denver.

The Board of Ethics determined that acceptance of travel and lodging expenses by Fire Department personnel from RTD would generally be prohibited by Section 2-60 (a) of the Code of Ethics, because the Fire Department is in a position to take direct official action, as defined in 2-52 (b) (2), by "enforcing laws or regulations or issuing, enforcing, or regulating permits" and because the City of Denver has a regulatory relationship with RTD. However, the Board

determined that acceptance of the travel and lodging expenses is permitted by Section 2-60 (b) (7) which allows "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."

Case 02-4

A Police Department division chief requested a waiver from Section 2-59 (b) of the Code of Ethics which prohibits city employees from supervising or being in a direct line of supervision over a member of his or her immediate family. The Division Chief was assigned to supervise a 900-officer division, in which three of his relatives already worked. One of those relatives, a son-in-law, is not included in the definition of "immediate family" in Section 2-52(c). Another relative, a daughter, is separated from her father by more than two levels of supervision, which is allowed by Section 2-59 (d).

The Board granted a waiver with respect to the division chief's supervision of the third relative, a daughter, who was in her father's direct line of supervision. The Board determined that a waiver was appropriate because (1) the daughter was already working in the division before her father became her supervisor's supervisor and (2) the division chief has agreed to abstain from taking any personnel action regarding his relatives in order to avoid the appearance of impropriety.

Case 02-5

An employee in the Public Works Department requested an advisory opinion regarding whether she has a conflict of interest prohibited by the Code of Ethics. She heads a division which approves the engineering for any improvements in public rights-of-way. An architectural firm in which her husband is a vice-president and owns 2.6% (1) presents plans to her division for approval or disapproval and (2) may apply to her division to provide professional services on a contractual basis.

The Board of Ethics found that Section 2-61 prohibits the employee from taking direct official action with regard to any matter involving her husband's firm, since her husband is an officer and owns more than 1% of the firm. These two factors give her a "substantial interest" in the business. The Board decided the employee must avoid taking any direct official action on all contracts or applications for permits in which her husband's firm participates either as a contractor or a subcontractor.

Case 02-6

An employee of the Department of Human Services inquired whether the Department may accept donations of tickets from such facilities as Ocean Journey and Denver Botanical Gardens and monetary donations from other private businesses. The Department intends to give the donations to employees in a "staff recognition program." The value of each item will be less than $25.00. The Department of Human Services does not solicit or accept items from any businesses with which it has any contract, business or regulatory relationship.

The Board decided that acceptance of such items is not prohibited under Section 2-60 (a), regardless of the value, because the employees accepting the gifts are not in a position to take direct official action with regard to the donors.

Case 02-8

An employee in the Department of Public Works Transportation Division requested an advisory opinion as to whether a conflict of interest would result if he ran for and was elected to the Board of Directors of the Regional Transportation District. The employee currently performs detailed engineering work for the city after an RTD-related project has been reviewed and approved by others in his division. He is not involved in any policymaking or planning processes regarding RTD projects.

The Board of Ethics determined that a conflict of interest would not result from the employee's election to the RTD Board of Directors. A conflict of interest under Section 2-61 of the Code of Ethics could arise, however, if the employee, acting on behalf of the city, were to take direct official action as defined in Section 2-52 on any matter involving RTD. The Board of Ethics determined that, if elected, the employee should recuse himself from any activity that would amount to direct official action regarding RTD. In addition, the Board recommended that, to avoid the appearance of impropriety, the employee, if elected, should refrain from taking direct official action as a member of the RTD Board on any contract or similar instrument in which the city is a party.

Case 02-9

The Manager of the Department of Safety requested a general waiver for employees within the Department of Safety from Section 2-59 (b) of the Code of Ethics, which prohibits an employee from being in a direct line of supervision over a member of his or her immediate family. The Manager indicated that many immediate family members employed in the Police, Fire and Sheriff Department are supervised by immediate family members. He proposed that, if a general waiver were granted, he would issue a directive that any employees in a direct line of supervision over immediate family members should recuse themselves from participating in any personnel action regarding that family member.

The Board determined that a general waiver was not appropriate because the Code of Ethics contemplates that the Board of Ethics will make a considered decision on the appropriateness of a waiver in each specific instance. Even though the Board will not unreasonably withhold waivers, the Board needs to evaluate the circumstances of each case. The Board offered to work with the Department of Safety to develop criteria to streamline the consideration of individual waivers.

Cases 02-11, 02-12, 02-24, 02-27, 02-28 and 02-29

In these cases, city employees requested advisory opinions or waivers related to accepting travel and lodging expenses for out-of-state conferences or field trips from companies that do business with the city.

In each instance, the Board determined that the employee was in a position to take direct official action, as defined in Section 2-52 (b), with regard to the companies offering to pay the expenses, because the employee was able to negotiate, approve, disapprove, administer, enforce or recommend for or against a contract or purchase order or to select or recommend vendors. The Board, therefore, concluded that acceptance of the travel and lodging expenses would violate Section 2-60 (a).

The Board decided not to grant waivers in these cases, holding that waivers should only be granted when there are emergency, unusual or exigent circumstances.

Case 02-13

An employee of the Election Commission requested an advisory opinion or a waiver concerning whether she and another Election Commission employee could hire members of their immediate families to serve as election judges or election night workers.

The Board determined that Section 2-59(a) of the Code of Ethics prohibits the hiring by a City employee of any immediate family member for any type of employment, including temporary employment, unless a waiver is granted.

Although the Board understood the need to hire temporary workers on an emergency basis; the Board declined to grant a waiver. The Board indicated that it is the intention of the Code of Ethics to discourage the appearance of favoritism which occurs if government employees hire their immediate family members without a competitive selection process.

Case 02-14

An employee of the Department of Revenue who intends to marry an employee who works in the same division requested an advisory opinion regarding whether he will be permitted to supervise his wife in limited circumstances after their marriage.

Applying Section 2-59 (b) of the Code, the Board determined that the employee may not jointly review with another supervisor an audit conducted by his wife and another auditor whom he normally supervises, because a finding made during the review of the audit could result in a personnel action for or against his wife. The Board decided that the employee may temporarily fill in to supervise the unit where his wife works when the unit manager is on vacation or sick leave for a brief period, so long as he does not take any personnel actions regarding his wife.

Case 02-15

The city forester requested an advisory opinion regarding whether the Code of Ethics would permit employees of the Forestry Division to solicit donations from companies to sponsor them in a bicycle ride to raise funds for tree research. Under the proposal, the city employees would solicit donations from contractors and vendors in the tree industry that are on contract with the City and would send the funds to a charitable 501 (c)(3) organization.

The Board concluded that city employees who negotiate, approve, disapprove, administer, enforce or recommend for or against a contract or purchase order or similar instrument are in a position to take direct official action with regard to the companies being solicited and, that, therefore, acceptance of such donations would ordinarily be prohibited by Section 2-60 (a). However, such solicitation is specifically permitted by Section 2-60 (c), which provides “It shall not be a violation of this article for an officer, official, or employee to solicit donations to the city or to solicit or redirect donations for charitable purposes as long as the person or a member of the person’s immediate family does not keep or use the gift.”

Case 02-17

The Director of the Department of Excise and Licenses requested an advisory opinion regarding whether the Code of Ethics would be violated if an inspector in the Department played in a band in one or more establishments that are licensed by the Department.

The Board gave an opinion on two separate issues. First, outside employment is generally allowed, so long as a city employee reports existing or proposed outside employment to his or her appointing authority and obtains written permission from the authority, pursuant to Section 2-63 of the Code of Ethics. Second, the Board considered Section 2-61, pertaining to conflicts of interest, and determined that the definition of "substantial interest" did not include playing as a part-time band musician at a licensed establishment. The Board, however, strongly recommend that, in order to avoid the appearance of impropriety, the employee should not perform any inspection duties for establishments licensed by the Department of Excise and Licenses in which he is employed or expects to be employed in the future.

Case 02-21

A manager in the Parking Management Section of the Public Works Department sought an advisory opinion or waiver. The issue was whether Section 2-59 (b) of the Code of Ethics would be violated if a supervisor of parking agents supervised his wife (who regularly works in a separate group) in parking enforcement for special events such as Denver Bronco or Colorado Rockies games. Due to rotation of the enforcement agents and the supervisors for such special events, the husband would likely supervise his wife 4 to 5 times per year.

The Board concluded that such a limited period of supervision does not violate the Code of Ethics. However, the husband should not take or recommend any personnel actions concerning his wife during the times in which he supervises her.

Case 02-22

The director of a city department requested an advisory opinion as to whether the Code of Ethics would allow him to solicit donations from companies for the family of one of the department employees whose house burned down.

Since none of the companies to be solicited does business with the department, neither the director nor any of the other employees in the department would be in a position to take direct official action regarding the companies to be solicited. Therefore, Section 2-60 (a) does not prohibit solicitation or acceptance of such donations.

Case 02-23

The manager of a section of the Public Works Department asked for an advisory opinion regarding whether Section 2-64 (a) of the Code would prohibit a former city employee who just resigned from her city employment from being rehired on a contractual basis as a consultant for six months. During the six months, the Career Service Authority intends to advertise and fill the position. The former employee agreed that during the six months she would not work for any other client with whom she had dealings when she was a city employee.

Section 2-64 (a) provides that "During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment 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 Board determined that the Code of Ethics does not prohibit the rehiring of the former employee as a consultant. The Board indicated that the principal problem which 2-64 (a) appears to address is a conflict between a city employee's loyalty to the city and his or her loyalty to the person's next employer. If the city is also the next employer, that problem would appear to be alleviated.

Case 02-25

As a follow-up to Case 02-9, the Manager of Safety requested an advisory opinion regarding whether Section 2-59 (b) of the Code of Ethics permits emergency or temporary supervision of employees of the Police, Fire or Sheriff's Department by a member of the employee's immediate family. Examples of such situations given by the Manager were: 1) a major fire where firefighters from several different stations were combined under the supervision of an assistant fire chief who might be the parent or grandparent of one of the firefighters; 2) a conference of international dignitaries where police officers from different districts or divisions would be unified under the command of a division chief for security purposes for a few days; 3) short-term special sting operations; and 4) an illness, injury or vacation necessitating a short-term shift in supervision.

The Board stated that Section 2-59 (b), which prohibits a City officer, official or employee from supervising or being in a direct line of supervision over an immediate family member, addresses "situations where an employee comes under the permanent supervision of an immediate family member."

The Board also said that Section 2-59 (c)(3) indicates that the problem to be prevented is favoritism or the appearance of favoritism toward relatives through the supervisor "participating in any personnel actions involving the family member." The Board concluded that emergency or short-term supervision which last no more than a few days and which are not repeated with any frequency would not violate the Code of Ethics. However, the temporary supervisor should not initiate or recommend any personnel action regarding the immediate family member. The Manager was also encouraged to seek an advisory opinion if situations arose which do not fit within the terms of this advisory opinion.

Case 02-26

The Director of the Department of Excise and Licenses asked for an advisory opinion as to whether the Code of Ethics would prevent an inspector in her agency from being assigned to the area of town where his father owns 100% of a restaurant which has a liquor license issued by the Department. An inspector makes reports and recommendations as to whether a business is complying with the requirements of its licenses. The director has ordered the inspector and the inspector has agreed: 1) to refrain from any involvement in any enforcement regarding his father's restaurant and 2) to resign as an officer in his father's corporation.

The Board indicated that Section 2-61 (a) of the Code of Ethics prohibits a City employee from taking direct official action on any matter in which any member of the immediate family (which includes a father) owns 5% or more of another party to the instrument. Direct official action includes "enforcing laws or regulations or issuing, enforcing or regulating permits," which would include enforcing license requirements. The Board determined that Section 2-61 (a) of the Code of Ethics will not be violated if the inspector complies with the two conditions stated above.