DIGEST OF SELECTED OPINIONS
January 1–June 30, 2004

Case 04-1

A City Council staff member filed a request for an advisory opinion asking for an interpretation of Section 2-60(b)(4), the four-meal or four-event exception of the gift section of the Code of Ethics. In particular, the staff member asked the Board for clarification as to whether the four-meal-or-ticket exception applies to the entire immediate family of a city employee, officer or official or to each member of the immediate family. The section in question provides:

(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:

(4) The donation of meals, tickets to events for which admission is charged, or free or reduced price admission to events for which a fee is charged, but only under the following conditions:

a. No more than a total of four meals, tickets, or free or reduced price admissions may be accepted from the same donor in any calendar year, regardless of the value;

b. A donation from an employee of a business or entity shall be counted as a gift from the business or entity;

c. The individual or entity which pays for the meal, ticket, or admission shall be considered the donor for purposes of this subsection regardless of whether that individual or entity is reimbursed for the cost;

d. Attendance must be reasonably related to the official or ceremonial duties of the officer, official, or employee;

e. The donation of parking for the meal or event shall be allowed on the same terms and conditions;

The Board of Ethics concluded that Section 2-60(b)(4) should be construed as follows:

1. An employee, officer or official who is in a position to take direct official action with regard to the donor may only accept up to four meals, tickets to events for which admission is charged or free or reduced price admission to events for which a fee is charged per calendar year from the same donor for himself or herself and the entire immediate family. He or she may not accept four for himself or herself and for each member of the family.

2. An employee, officer or official who can lawfully attend a meal or an event can take immediate family members with the other three tickets. The family members do not have to have an official or ceremonial reason for attending. Only the employee or officer or official must

have such a reason. The fact that they are accompanying someone who is lawfully attending is sufficient justification for the attendance by immediate family members.

3. Members of an immediate family of an employee, officer or official cannot use the donated meals or tickets unless the city employee, officer or official also attends.

Case 04-2

A board member of the Winter Park Recreational Association requested an advisory opinion as to whether the Code of Ethics would permit City Council members to accept free transportation on the Ski Train to and from Winter Park, so that the Council could receive a briefing about and tour of Winter Park, a ski area owned by the City and County of Denver. The transportation would be donated by the owner of the Ski Train. The Board of Ethics was informed by the Auditor's office that there is no existing or pending contract, business or regulatory relationship between the City and County of Denver and the Ski Train or its owner. Based on that information, the Board of Ethics concluded that acceptance of train tickets from the Ski Train by members of City Council and their staff would not violate Section 2-60(a) of the Code of Ethics.

Case 04-3

An Associate Landscape Architect for the Department of Parks and Recreation requested an advisory opinion. She planned to retire from her city employment and establish a freelance writing and marketing firm. She asked if Section 2-64 of the Code of Ethics would permit her to do some marketing work on a contract basis for the Department of Parks and Recreation during the first six months after she left city employment. Section 2-64 provides:

Sec. 2-64. Subsequent employment.

a) 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 of Ethics determined that, during the period that she served as an Associate Landscape Architect, the employee did not take any "direct official action" with regard to any marketing matters; therefore the Board found that Section 2-64 did not prohibit the former employee from working on a contract basis for the Department immediately, without having to wait six months.

Case 04-4

The Manager of the Department of Human Services requested an advisory opinion as to whether she was permitted by the Code of Ethics to hire on a contract basis for thirty-two hours per week a person who was already working on a contract basis for eight hours per week for another Department of the City and County of Denver. The Board of Ethics concluded that, pursuant to Section 1.2.8 of the City Charter, which provides that "no employee or appointed Charter officer shall have other employment or hold other public office that is incompatible with his or her duties..," the two contracts were not incompatible with each other. The Board also advised that the contract employee should obtain written approval from each of the two agency heads regarding the "outside employment" with the other agency, as required by Section 2-63 of the Code of Ethics.

Case 04-6

An officer in the Police Department asked for an advisory opinion. He had been asked to do off-duty work by a law firm to serve as an expert witness to evaluate evidence and/or testify in civil litigation alleging excessive force by police officers in other jurisdictions outside Denver. The Board of Ethics determined that such work complied with the Code of Ethics, so long as the officer's appointing authority gave written approval, as required by Section 2-63. The Board also recommended that, in order to avoid the appearance of impropriety, the officer should not serve as an expert in any case involving any Denver police officers or the Denver Police Department or any location inside Denver, that he should perform all work on any such cases in his off-duty time and should not do off-duty work in any city work-place or use any city computer or other equipment.

Case 04-7

A sergeant in the Sheriff's Department assigned to the Denver County Jail requested a waiver from Section 2-59(b) of the Code of Ethics which prohibits city employees from being in the direct line of supervision of immediate family members. The sergeant's brother, a deputy sheriff, is also assigned to the County Jail, but in a different unit and with only a small overlap with the shift of his brother. On rare occasions, such as an emergency at the jail or a temporary change in schedules dues to vacations, the sergeant might be called upon to supervise his brother. The Board granted a waiver to the sergeant, based upon the circumstance of this case, so long as he would not take any personnel actions concerning his brother.

Case 04-9

A Division Chief in the Sheriff's Department requested an advisory opinion. He is responsible for overseeing certain departmental construction projects. His recently-retired predecessor received tickets to a Denver Avalanche game from a construction contractor involved in one of the projects that the Division Chief now oversees. The predecessor wishes to invite the Division Chief to accompany him to the hockey game. There would not be any business associated with attendance at the game; rather, it would be only for a social purpose.

The Board determined that acceptance of the ticket by the Division Chief would violate Section 2-60(a) of the Code of Ethics because the Division Chief would be in a position to take direct official action over the construction company, such as by recommending renewal or termination of the construction contract or by recommending future contracts with the same company, and because the construction company has a contract with the city. The Board said that the fact that the gift of the game ticket did not come directly to the Division Chief, but rather passed through the hands of his predecessor, did not alter that conclusion. Since the game was only for a social purpose, the exception in Section 2-60(b)(4) does not apply, which allows acceptance of gifts by those otherwise prohibited by 2-60(a) but only if attendance at a game or event or meal is "reasonably related to the official or ceremonial duties of the officer, official or employee."

Case 04-10

A Commander in the Police Department requested an advisory opinion as to whether a private organization could offer free massage services at police stations. The Board advised the Commander that the Code of Ethics does not speak directly to that issue; however, the Board researched the issue and informed the Commander that a policy memorandum from the Public

Office Buildings Division indicates that vendors of any kind may not provide goods or services in city buildings unless the vendor has a written lease or unless the goods or services are provided as part of "city-related purposes and events which are approved in advance by both the city official or agency involved and by the building manager and the Director of Public Office Buildings."

Case 04-11

An inspector in the Building Inspection Division requested an advisory opinion concerning whether he could engage in outside business activity by establishing a small garage construction company. The Board advised the inspector that he was required by Section 2-63 of the Code of Ethics to obtain approval from his appointing authority. The Board said "the Board of Ethics is not able and does not wish to overrule any appointing authority's decision not to allow a city employee to engage in outside business activity or outside employment. The Board is willing to analyze any request and provide its analysis if the appointing authority is interested in receiving such an analysis." In this case, the appointing authority had a number of reasons why such outside business activity would not be approved for any of the Division's inspectors.

Case 04-12

A City Council staff member requested an advisory opinion as to whether a City Council member would violate the Code of Ethics by accepting an airline ticket that was awarded in a drawing after a speech at a public meeting made by an executive of the airline company. Anyone who attended the speech was eligible for the drawing. The City Council has responsibility for approving or disapproving contracts or leases with the airline company. The Board of Ethics concluded that acceptance of the ticket was not prohibited by the gift section of the Code of Ethics because "Section 2-60 was not intended and should not be interpreted to prohibit acceptance of prizes awarded by chance, so long as the prizes are not targeted to officials, officers or employees who are in a position to take direct official action with respect to the donor. In other words, the prizes must be legitimately awarded on a random or chance basis."

Case 04-16

An employee involved in maintenance of the Police Department's vehicle fleet requested an advisory opinion. He indicated that a private automobile dealership had donated a new vehicle to the Police Protective Association to be raffled in a fundraiser. He also indicated that a union representative had recommended that some Police Department warranty service work be awarded to that same dealership. The Board of Ethics determined that the Code of Ethics does not directly apply to this situation, because the gift of the new vehicle was given to the police union, which does not have the ability to take direct official action with regard to Police Department purchases or repair arrangements. Nonetheless, the Board determined that there would be the appearance of impropriety if city business were to be given to an entity after gifts or favors were received from that entity by an organization representing employees, officers or officials. The Board also suggested that, if the Department would initiate a competitive selection process for vehicle repairs, some of the appearance of impropriety might be alleviated.

Case 04-17 An employee in the Department of Environmental Health asked for an advisory opinion about whether solicitation of donations by employees of the Department would violate the Code of Ethics. Donations would be items such as gift certificates to be offered in monthly

random drawings among city employees to encourage them to take measures to reduce ozone pollution. The solicitation would be by a letter to potential donors that would be signed by an assistant in the Travel Reduction Program in the Department. The Board of Ethics concluded that solicitation of donations of such prizes does not violate Section 2-60 of the Code of Ethics so long as the person doing the soliciting is not in a position to take direct official action with regard to the potential donor or so long as the items are "of trivial value…with a value of $25.00 or less, such as inexpensive tee shirts, pens, calendars, books, flowers or other similar items" or "memberships and passes from the Denver Art Museum, Denver Botanic Gardens, Denver Museum of Nature and Science and the Denver Zoo."

Case 04-18

The Auditor of the City and County of Denver requested an advisory opinion. He has recently retired as a professor at a local university and asked whether he might accept travel expenses and an honorarium from that university to conduct an educational trip to Ireland for students and be in compliance with the Code of Ethics. The Board of Ethics reviewed three issues. First, the Board reviewed Section 2-63 of the Code regarding outside employment and determined that elected officers of the city are not required by that section to obtain approval from any appointing authority to engage in outside employment or outside business activity. Second, the Board reviewed the gift section of the Code of Ethics, 2-60, and determined that the gift section does not prohibit the proposed payment by the university, because the Auditor is not in a position to take direct official action with respect to the university, since there is no current or pending contract or business relationship between the city and the university. Third, the Board considered section 1.2.8(B) of the city charter. That section provides that:

Elected officers of the City shall not hold any other elective office or any employment that is incompatible with their duties. Elected officers shall not hold any other employment with the City.

The Board determined that there is not any conflict of interest or any other aspect of the trip to Ireland or other similar teaching duties that would be incompatible with the duties of the Auditor.

Case 04-21

The Deputy Chief of the Fire Department asked for an advisory opinion concerning a recently retired firefighter, who wished to be employed on a contract basis by the city's Department of Aviation to do certain fire inspections at Denver International Airport. The firefighter had been conducting fire inspections for many years during his service with the city. The Deputy Chief wished to know whether such contract employment would violate Section 2-64 of the Code of Ethics, which provides:

Sec. 2-64. Subsequent employment.

(a) 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 of Ethics concluded that the retired firefighter could immediately begin the contract work at DIA, without waiting six months. The Board said that it believed that "the principal problem which 2-64(a) appears intended to prevent 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 next employer is also the city (although a different department or agency), that problem is alleviated." The Board indicated that it could not discern any conflict in the employee's relationship with the Fire Department and his subsequent employment as a fire inspector at DIA.

Case 04-22

A project director in the Mayor's Office of Economic Development (MOED) who intended to leave city employment and go to work for the Denver Urban Renewal Authority (DURA) requested an advisory opinion and/or a waiver. Her DURA job would involve major responsibility for many of the same projects that she worked on at MOED. The Board reviewed Section 2-64 of the Code, which provides:

Sec. 2-64. Subsequent employment.

(a) 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 of Ethics concluded that since the employee had major responsibility for the city during the last six months for certain projects and she would also have major responsibility at DURA for the same projects, she, therefore would be taking "direct advantage, unavailable to others, of matters with which she took direct official action during her service with the city." She, therefore, would violate Section 2-64(a) if she assumed major responsibility during her first six months at DURA for the same projects for which she had a major responsibility while she worked for the City. The Board noted that (unlike the situation in Case 04-21) DURA is a distinct and separate corporate body from the City and County of Denver.

The Board also decided, however, to grant a waiver to the employee to allow her to begin her work at DURA without waiting six months, because "the interests of DURA and the city appear to be identical on the…projects" and it is in the best interest of the city to waive the waiting requirement.

Case 04-24

An Assistant City Attorney requested an advisory opinion concerning the Denver Welfare Reform Board (DWRB). The DWRB was established by Ordinance 673 of 1997. One section of that ordinance prohibited members of the DWRB from having "a current contractual relationship involving the receipt of funds" from two state funds providing welfare funds to local jurisdictions. The request for advisory opinion posed questions about whether the Code of Ethics or Ordinance 673 of 1997 prohibited two specific members of the DWRB from serving on that board, due to their employment. The Board of Ethics examined the circumstances of each of those DWRB members and concluded that neither of those members had conflicts of interest that would be prohibited by Section 2-61 of the Code of Ethics. The Board noted, however, "the Board of Ethics is only able to interpret and apply the Code of Ethics and it is not authorized to interpret or to grant waivers from other ordinances, including Ordinance 673 0f 1997."

Case 04-25

A member of City Council has been requested to serve as a political director for the state of Colorado of a national presidential campaign. The Council member requested an advisory opinion as to whether this would be in compliance with the Code of Ethics. The Board of Ethics ruled, as in Case 04-18, that elected officers are exempt from the requirement in Section 2-63 of the Code of Ethics that permission must be obtained from a person's appointing authority before the person can engage in outside employment or outside business activity. The Board said that "the reason for this is that elected officers do not have 'appointing authorities' in the city government." The Board then recommended that, even though members of City Council are not generally subject to control by the executive branch, the Council member should review memos periodically issued by the Mayor's office concerning campaign activities and should follow that guidance in order to avoid the appearance of impropriety. Those memos advise city employees that they must not use city time, facilities, equipment or resources, including telephones, for any campaign activities.

Case 04-29

A citizen filed a complaint/inquiry concerning a member of the Mayor's Commission on Homelessness alleging a conflict of interest, among other issues. The Board of Ethics, during its screening process, determined that this case should be dismissed, as well as other inquiries filed by the same person against other members of the same Commission. The Board, however, in interpreting Section 2-52(e) of the Code of Ethics, determined that the Code of Ethics does apply to members of "informal" Denver boards or commissions (those not created by ordinance or charter) as well as to members of boards or commissions that are created by ordinance or charter. The Board held that "members of informal commissions should not be held to a lesser standard than members of formal commissions and the Board finds that members of all city commissions, both formal and informal, qualify as city officials under the Code of Ethics."