January 1-June 30, 2005

Board of Ethics
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DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
January 1 – June 30, 2005

Case 05-1

A City Council-member's aide was invited by the Denver chapter of a non-profit organization to travel to Minneapolis-St. Paul to visit a residential treatment facility to evaluate whether such a facility could be replicated in Denver. The Council-member and the aide had been studying ways that Denver can deal with the problem of prostitution and believed that the Minnesota facility might be a useful model. The aide requested an advisory opinion about whether acceptance of travel expenses from the non-profit would violate the gift section of the Code of Ethics.

The Board of Ethics advised that Section 2-60(a) of the Code of Ethics could be violated by accepting travel expenses from the non-profit if the aide later recommended to the City Council-member that city funding of a Denver facility run by the same non-profit should be approved. However, the Board found that Section 2-60(b)(7) grants an exception for "reasonable expenses paid by non-profit organizations or other governments for attendance at a…fact-finding mission or trip…if the person is scheduled to …represent the city." Therefore, the Board determined that the aide would not violate the Code of Ethics by accepting the travel expenses from the non-profit organization.

Case 05-2

The director of a city division that deals with insurance matters requested an advisory opinion about whether an employee in the division may have outside employment working for a company that has a contract with the City and County of Denver to provide insurance-related services.

The Board of Ethics indicated that, pursuant to Section 2-63 of the Code of Ethics, no city employee may engage in outside employment or outside business activity without first obtaining written approval from his or her appointing authority. (Pursuant to an amendment made to the Code in September 2004, such approval must be reviewed annually.)

The Board then decided that, if the division director does approve the outside employment, the employee's employment by the company would not violate Section 2-61 of the Code of Ethics regarding conflicts of interest, so long as the employee 1) agrees never to work in the outside job on any claims regarding the City and County of Denver; 2) will never have any role in deciding or recommending whether the city's contract with the outside company should be renewed or terminated and 3) never demonstrates in the city job any favoritism or lack of independent judgment in dealing with information from the outside employer.

Case 05-3

A city employee who was a member of the city's collective bargaining team and who has recently retired from city employment requested an advisory opinion as to whether the former employee could now obtain employment by one of the employee groups involved in collective bargaining with the city in 2004. The former employee would perform some of the same types of analyses on an ongoing basis for the employee group as were done for the city, even though the next round of collective bargaining would not begin until 2007.

The Board of Ethics determined that Section 2-64(a) of the Code of Ethics requires that the former employee must wait at least six months from the termination of city employment before working for any employee group on matters related to collective bargaining with the City and County of Denver.

Case 05-4

A department director requested assistance from the Board of Ethics in reviewing a television news investigative report that questioned actions by two city employees involved in the Juvenile Offender Work Program in assigning and transporting juvenile offenders to assist in cleanup activities approximately twice per month at a nonprofit club in which the city employees were club members. The two city employees also worked off-duty at the club a few times per year, with approval from their appointing authority. The club is on a list of many nonprofit groups approved by the Denver County Court for such work by juvenile offenders. The city employees transported juvenile offenders to work at many other city and nonprofit work locations as well as to the club in question.

After reviewing the facts and Section 2-61 of the Code of Ethics regarding conflicts of interest, the Board concluded that this situation did not constitute a violation of Section 2-61. The Board also reviewed recommended procedures for the operation of the Juvenile Offender Work Program and indicated that the recommended procedures, if implemented, would assist in protecting the program from conflicts of interest or appearance of impropriety.

Case 05-6

A city employee who had significant responsibility for planning some of the aspects of the 2005 National Basketball Association's all-star game events in Denver requested an advisory opinion. The NBA delivered to the employee a package of items, including a parka and scarf, with the NBA All Star Game logo several days after the conclusion of the events, along with a letter thanking the employee for work supporting the successful events. The employee wished to know if acceptance of the gifts would violate the Code of Ethics.

The Board of Ethics concluded that the gift section of the Code of Ethics, Section 2-60(a), relates to this situation because 1) the employee was in a position to take direct official action with respect to the NBA by "enforcing laws or regulations or issuing, enforcing or regulating permits" and 2) the city had a contract or regulatory relationship with the NBA. However, the Board determined that this relationship no longer existed after the conclusion of the NBA events. The Board believed that the thank-you gift, which was unsolicited, had no intended or actual effect on the employee's decisions regarding the NBA events. Therefore, the Board decided that the employee would not violate Section 2-60(a) by accepting the gift.

Case 05-7

A city employee requested an advisory opinion as to whether the employee would be permitted by the Code of Ethics to be employed by a private company during off-duty hours to lobby federal officials or agencies on behalf of the company's interests.

The Board of Ethics advised that the employee must obtain advance written approval from the employee's appointing authority, pursuant to Section 2-63 of the Code of Ethics. In addition, the employee must comply with Section 2-61 by not taking any direct official action as a city employee in any matter in which the outside employer has a substantial interest, as defined in that section. Finally, the Board recommended that, if the appointing authority approved, the employee should comply with any federal lobbying registration and disclosure requirements, not do any lobbying work on city time and not use any city computers, telephones, supplies or other facilities for the lobbying work.

Case 05-9

A city agency director who has responsibility for purchasing and maintaining new vehicles for many city departments requested an advisory opinion. The employee wished to know if a proposal for language to be inserted into future city bid documents for specially-manufactured equipment, such as snow-removal vehicles or solid waste-removal trucks, would violate the Code of Ethics. In summary, the language would require all bidders with fabricating plants more than 200 miles from Denver to include in the bid price "all travel expenses to the plant" for City and County of Denver representatives to inspect the first manufactured unit before it is painted and delivered. The director thought that this would minimize delays, expense and aggravation for both the city and the manufacturer by correcting flaws shown by an inspection before vehicles are delivered to Denver.

The Board examined Section 2-60 of the Code of Ethics, pertaining to gifts, including travel expenses. The Board concluded that the city representatives who would visit the assembly locations would be in a position to take direct official action with regard to the manufacturing companies and the companies would have a contract relationship with the donor. However, the Board determined that this proposal is different from the situation prohibited by Section 2-60(a), in that the travel expenses and lodging would not be given "without adequate and lawful compensation." The expenses would be part of the bargained-for price and would be part of the consideration for the contract and would serve the best interests of the City and County of Denver by decreasing the time delays for obtaining fully operational customized vehicles. The Board also found that the proposal, if implemented, would remove the factor of having one particular manufacturer being perceived to be attempting to gain favor with a decision-maker by offering travel expenses. Rather, all manufacturers who wish to bid would be required to include such expenses in their bid prices.

The Board of Ethics stated that this decision was limited to purchase of specialized, custom-assembled, high-cost vehicles and that the Board did not wish to encourage city departments or employees to solicit or accept travel expenses regarding more ordinary purchases. The Board also encouraged the director to review the proposal with the City Attorney's office. The Board also expressed appreciation for a proposal that not only would benefit the city and manufacturers, but also meets the letter and the spirit of the Code of Ethics.

Case 05-10

A city contract administrator requested an advisory opinion regarding a contract employee who had been hired by a city department to coordinate the Family Community Initiatives Coalition. The Coalition will award and administer contracts for the delivery of several types of social service programs in certain Denver neighborhoods. The department will request proposals from nonprofit agencies that provide various services. Contracts to provide services will be awarded to some of the nonprofit agencies, based upon a review and recommendations to the manager of the department by a Proposal Review Committee, which will be staffed by the contract employee.

The contract employee serves on the board of the Mental Health Corporation of Denver (MHCD), which has not and will not submit any proposals to receive contract money. The employee is not an officer of MHCD. MHCD is one of several "partners" in the Coalition, meaning that MHCD will not receive any funds, but its services will be among those that will be coordinated by the grantee(s). The contract employee does not serve on the board of any entity that has submitted a proposal for a Coalition contract.

The Board of Ethics determined that the contract employee is subject to the Denver Code of Ethics, even as a contract employee, because all contract employees fit the definition of employee in Section 2-52 (a) of the Code of Ethics: "any person in the employ of the city or any of its agencies or departments ..."

The Board of Ethics considered whether the contract employee has a conflict of interest under Section 2-61 of the Code of Ethics which would prohibit the employee from recommending contract awardees, in light of the employee's board membership with MHCD. The definition of "direct official action" in section 2-52(b) includes "...recommending for or against a contract...if the person making the recommendation is in the formal line of decision making."

The Board concluded that the contract employee's board membership in MHCD does not prevent the employee from being able to serve as staff to the Family Community Initiatives Coalition and its Proposal Review Committee or to participate in recommending contract awardees, because board membership alone is not defined as a "substantial interest" in Section 2-61 and because MHCD will not be seeking a contract regarding the work of the Coalition.

The Board recommended, however, that, in order to avoid the appearance of impropriety, the employee should abstain from voting or scoring votes if MCHD or any other agency where the employee sits as a board member should decide to apply for funding under this program.

Case 05-11

Since 1984, the City and County of Denver has celebrated and recognized city employees through a series of events, formerly known as City Team Week, now known as City Spirit. A city employee who is a volunteer member of the City Spirit fundraising subcommittee.requested an advisory opinion about fundraising to pay the costs of a picnic for city employees as a major City Spirit event.

The City Spirit fundraising subcommittee wishes to raise funds from major companies to cover the costs of the lunch. Monetary contributions would be placed in a "special revenue fund" established by City Council for City Spirit and expenditures would be taken from that fund.

The pertinent section of the Code of Ethics, Section 2-60(c), which was significantly amended in September 2004, is as follows:

2-60(c) 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 to a 501(c) or other charitable organization or to provide assistance to individuals affected by illness, crime or disaster or who have educational or other charitable needs, provided that solicitation and financial records are maintained and 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.

This section provides that, even if the terms of the gift section of the Code of Ethics, Section 2-60(a), would be violated by a specific solicitation or acceptance of a gift, it would not violate the Code of Ethics so long as the donation is "to the city…or…for charitable purposes."

The Board of Ethics concluded that employee recognition and fun and food for city employees do not fit any of the regulations defining a charity and do not fit the recently-added definition in 2-60(c). By this conclusion, the Board reversed an earlier decision (Case 01-8), which had interpreted City Team Week as a charitable purpose.

However, since the donated funds will be placed in a special revenue fund established by the city, donations for City Spirit do constitute donations "to the city." Therefore, the Board of Ethics concluded that solicitation and acceptance of gifts by city employees of donations for City Spirit do not violate the Code of Ethics so long as the city employee doing the soliciting or a member of the employee's immediate family does not keep or use any of the donated items or funds.

The Board strongly recommended, however, in order to avoid the appearance of impropriety, that no city employee or officer should solicit any donations from a person or business if that city employee or officer has any type of regulatory or enforcement or contractual or other type of relationship with the person or business. For example, a restaurant inspector or a police officer who patrols that area should not solicit a restaurant owner. The reason for this is that the restaurant owner and the public should not have any belief that the restaurant owner may receive favorable treatment from the restaurant inspection division or from the police officer if the owner makes a donation or may receive unfavorable treatment if the owner does not make a donation. As another example, if an insurance company does business or wishes to do business with the City and County of Denver, no city employee involved in selecting the insurance company or negotiating or monitoring the insurance contract should be involved in soliciting a donation from the insurance company.

The Board also recommended that the letter soliciting donations should include a statement to the effect that there will be no consequence, favorable or unfavorable, should the donation be given or not.

The Board of Ethics limited this opinion only to City Spirit events. If the city government or city employees wish to engage in solicitation of donations for other projects, the Board encourages any parties involved to contact the Board so that issues specific to those projects can be considered.

Case 05-12

A police officer provides unpaid volunteer security service once a year for a fundraising event sponsored by a foundation that supports the officer's child's school. The officer received a gift of a free two-night mountain hotel stay in appreciation for the officer's service. The officer

requested an advisory opinion as to whether acceptance of the gift would violate the Code of Ethics. The fundraising event was located outside the police district to which the officer is assigned.

The Board of Ethics determined that the City and County of Denver does not have an existing, ongoing or pending contract, business or regulatory relationship with either the foundation or the mountain hotel and, therefore, the officer's acceptance of the gift under the specific facts of this case would not violate Section 2-60(a) of the Code of Ethics.

Case 05-13

The Director of the Division of Motor Vehicles requested an advisory opinion regarding a request that one of the city employees in the Division had made for approval of outside business activity as a partner in a small automobile dealership. The employee's main city responsibilities are to title and register motor vehicles and to collect and process the proper fees and paperwork.

The Board of Ethics indicated that Section 2-63 of the Code of Ethics gives jurisdiction to an employee's appointing authority to determine whether or not to approve an employee's request to engage in outside employment or outside business activity. The Board also noted that Section 2-63 requires that such approval must be given "prior to accepting initial employment or outside business activity" and determined that the employee had violated Section 2-63 by waiting approximately six months after the dealership was licensed by the state before the employee requested approval from the appointing authority. The Board, however, did not choose to recommend discipline because the violation may have been unintended and because no one had filed a complaint regarding that issue.

The Board also examined the conflict of interest section of the Code of Ethics, Section 2-61, and determined that the employee would violate 2-61 if the employee were involved as a city title clerk in issuing a motor vehicle title or permit or other paperwork to the employee's dealership or to a customer of the dealership. However, the employee would not violate 2-61 if the employee and the appointing authority can agree and arrange that any transaction whatsoever, including processing titles or other paperwork or handling taxes or permit fees, relating to the employee's dealership must be handled by Motor Vehicle Division employees other than the employee and preferably at another branch office besides the one where the employee works. The Board indicated that if the appointing authority decides to permit this outside business activity, the Board strongly recommends that the employee not use any city facilities, including telephones or computers, or any city time for the outside business.

The Board, however, indicated that it believes that an agreement such as that mentioned in the preceding paragraph would be very difficult for the Division of Motor Vehicles to manage and oversee in order to assure that no titles are issued without the proper paperwork or without payment of the proper fees or taxes. Although the Board assumes that the employee in question is a trustworthy employee, the Board is nonetheless concerned that the director may not wish to set a precedent for allowing other Division of Motor Vehicle employees to work for private automobile dealerships in their off-duty time.

Case 05-14

The director of an agency was requested by a vendor of new equipment purchased by the city for use of the agency to send an agency employee to a users' conference in Omaha to learn about and discuss the equipment with other users. The vendor would pay the travel and lodging expenses for the employee. The director requested an advisory opinion from the Board of Ethics.

The Board determined that the employee in question is not "in a position to take direct official action" with respect to the vendor and, therefore, the employee is not prohibited from accepting the travel and lodging expenses by Section 2-60(a) of the Code of Ethics. The Board indicated that its approval was based on the belief that the purpose of the trip was to provide users with education about the new equipment, rather than to be a sales conference for the benefit of the manufacturer.

Case 05-15

An employee of a city agency, pursuant to Section 2-63 of the Code of Ethics, obtained approval from the employee's appointing authority to engage in outside business activity, namely a computer software development and consulting company. The employee requested an advisory opinion from the Board of Ethics as to whether the employee's company may bid for software development work in any city agency or sell software to any city agency.

The employee indicated that the employee has no authority over approving or negotiating contracts or purchase orders, selecting vendors, etc. In other words, the employee does not "take direct official action." The Board analyzed the conflict of interest section of the Code of Ethics, Section 2-61, and determined that the employee does have a "substantial interest" in the employee's company.

The Board determined that, so long as the appointing authority approves the outside work on an annual basis and so long as the employee has no direct official action role whatsoever with respect to any contracts or sales to the city, the employee will not violate the Code of Ethics by either submitting bids or selling products or services to any department or agency in the city, except for the employee's own agency. The Board determined that any sale of goods or services by the employee's company to or for the use of the employee's own agency would violate Section 2-67 of the Code of Ethics, which provides:

Sec. 2-67. Use of public office for private gain.

No officer, official or employee shall use his or her public office or position… in order to obtain private gain for himself or herself, for his or her immediate family or for any business entity with which he or she is affiliated ...

The Board also concluded that if the employee's company were to provide goods or services to the employee's own city agency, it might also give the perception to the public of possible favoritism toward the company due to the employee's employment with the agency.

The Board also recommended that the employee and the company should abide by all of the city's purchasing rules and processes and should not use any city facilities, equipment or time in the outside business activity regardless of who the company's customers might be.

Case 05-16

A city employee requested an advisory opinion on behalf of an employees' organization, Organization for Latino Employees (OLE), that intends to host a cultural fair and wishes to seek monetary contributions or in-kind services from businesses in the Denver area. Any monetary contributions would be placed in an OLE bank account and would be used to fund the cultural fair, which will include educational films, entertainment, speakers, etc.

The Board of Ethics concluded that, so long as those city employees who solicit donations are not "in a position to take direct official action with regard to the donor," Section 2-60(a) does not prohibit OLE members from soliciting or accepting donations for the cultural fair.

Even if they are in a position to take such direct official action, however, 2-60(c) permits "charitable purposes" solicitations. A cultural fair can be seen as a charitable purpose. Therefore, the Board determined that city employees or officers may solicit donations to assist with OLE's cultural fair. The Board strongly recommended that, in order to avoid the appearance of impropriety, OLE members should follow the same recommendations given in Case 05-11 (noted above).

The Board of Ethics limited this opinion only to the cultural fair events. If the city government or city employees wish to engage in solicitation of donations for other projects, the Board encourages any parties involved to contact the Board so that issues specific to those projects can be considered.