DENVER BOARD OF ETHICS

DIGEST OF SELECTED OPINIONS
January 1– June 30, 2006

Case 06-1

A deputy manager of a department requested an advisory opinion regarding potential outside employment with a consulting and training organization. The Board of Ethics indicated that Section 2-63 of the Code of Ethics requires that a City employee must obtain written approval of his or her appointing authority before beginning outside employment or outside business activity; however the Board of Ethics is always willing to give advice to the employee and/or the appointing authority.

In this case, the Board indicated that there did not appear to be a conflict of interest, because the organization did not have any current or pending contract or business or regulatory relationship with the deputy manager's department. If, however, the organization sought a future contract with the department, the deputy manager should abstain from any involvement whatsoever in that contract, if he did engage in outside employment with the organization. In addition, the Board encouraged the deputy manager to obtain written approval of the outside employment from both the manager of the department and the Mayor, since he is a mayoral appointee.

Case 06-2

A citizen wished to file an inquiry (complaint) concerning a member of the board of a Business Improvement District appointed by the Mayor. After receiving an opinion from the City Attorney's Office that Business Improvement Districts are "solely creatures of state law," the Board of Ethics concluded that members of Business Improvement District boards are not regulated by the Code of Ethics and that the Board of Ethics does not have jurisdiction to investigate complaints against them.

Case 06-3

An agency head requested an advisory opinion concerning an employee's request for approval of outside employment. The employee works for the City's Channel 8 and wished to engage in weekend outside employment for a private television station. The Board of Ethics determined that, if the employee obtained approval from his appointing authority:

- There will not be a conflict of interest in violation of 2-61 so long as the employee does not use any direct official action authority to approve or recommend regarding a contract or purchase order with the private channel
- The employee should not use his City job (including, but not limited to, disclosure of confidential information, use of City time or facilities or material) for his outside job; otherwise there would be a violation of 2-67

- The outside job is not incompatible with the employee's City job, based upon his representation that he has no involvement in gathering news or controlling content in the outside job.

Case 06-4

A special assistant to a department head manages grants to and grant applications from the Denver metropolitan area relating to federal Department of Homeland Security projects. He requested an advisory opinion as to whether he could hire a part-time contract employee who also provided contract services to another metropolitan area which was competing with the Denver area for grants.

The Board of Ethics advised that the hiring or the work of the contract employee would not violate the Code of Ethics or create an appearance of impropriety because she would be performing different services for the Denver area (preparing grant applications)and the other metropolitan area (teaching new concepts in Homeland Security funding to employees).

Case 06-7

A district Police Commander requested an advisory opinion as to whether she could engage in fundraising to assist in organizing a national convention in Denver in 2007 of the International Association of Women Police, a 501(c)(3) tax-exempt organization.

The Board advised that the Commander is permitted by Section 2-60(c) of the Code of Ethics to solicit contributions for a 501(c) (3) charitable purpose, such as the IAWP convention. However, the Board encouraged her to avoid the appearance of impropriety by not personally soliciting from any persons or entities over which she may have direct official action authority, such as individuals or businesses in her police district over whom she would have power to enforce the law or vendors over whom she might have authority to approve or recommend or negotiate a contract or purchase order. The Board also encouraged her not to solicit contributions from anyone in person while she is in uniform. The reasoning for these suggestions was so that the individuals or entities and the public should not have any belief that the individuals or entities might receive favorable treatment from the police in that district if they make a donation or might receive unfavorable treatment if they do not make a donation.

Case 06-8

A City Council member requested an advisory opinion as to whether the Code of Ethics would permit her to serve as an unpaid volunteer co-chair of a committee promoting Denver as the site for the 2008 Democratic Party national presidential nominating convention. The Board of Ethics determined that elected officers (as opposed to City employees and cabinet members) are not required by Section 2-63 of the Code of Ethics to obtain permission to engage in "outside employment." However, even if they were, the Board of Ethics has generally not considered "outside employment or outside business activity," to include unpaid volunteer work.

The Board of Ethics determined that the Code of Ethics does not prohibit her from serving as co-chair of the committee. In addition, although Section 2-60(c) of the Code of Ethics permits City officers and employees to solicit donations for charitable purposes, the Board recommended that, in order to avoid the appearance of impropriety, she should not herself solicit from entities over which she will have decision-making authority in the reasonably

foreseeable future, such as applicants for re-zoning, companies seeking City franchises from City Council or companies needing City Council approval of contracts.

Case 06-9

The chair of the Denver Diversity Advisory Committee requested advice on several questions relating to proposed activities. The Board of Ethics determined:

- There is no requirement in the Code of Ethics that the Committee must search out more than one product vendor to sell at an event or that a vendor must be a City-approved vendor (by the Purchasing Division). The City's Acting Purchasing Director confirmed to the Board of Ethics that a one-day event at which City employees and others may purchase products for themselves is not subject to the detailed requirements and processes required by the Purchasing Division for purchase of goods by the City. The Board of Ethics recommended that the Committee should employ a general principle of fairness and should not select such vendors based on friendship or favoritism.

- There is no reason in the Code of Ethics that would prohibit the Committee from allowing "affinity groups" of City employees to conduct a membership drive in conjunction with a Committee-sponsored event, so long as those participating in the drive are not doing it during their City working hours.
- There is no prohibition in the Code of Ethics of the Committee's sponsorship of an event to showcase the creativity of City employees and allowing the employees to sell books or any other products, so long as it is not during their City working hours. The Board of Ethics recommends that the Committee should employ a general principle of fairness and should not select such employees based on friendship or favoritism.

- There is no provision in the Code of Ethics that would prevent the Committee from selling products on City premises to generate funding for diversity initiatives.
- The Board of Ethics considered the solicitation of door prizes for events sponsored by the Committee, which would be regulated by Section 2-60(c) of the Code of Ethics. The purposes of the Committee are generally educational and should be construed as "charitable purposes;" therefore, the Board determined that City employees may solicit door prizes or other contributions pursuant to 2-60(c) even if such solicitation would otherwise violate the gift provisions of 2-60(a). The Board of Ethics, however, encouraged Committee members, in order to avoid the appearance of impropriety, not to solicit door prizes or gifts from persons or entities over which they have direct official action power. For example, a restaurant inspector should not solicit a door prize or contribution from a restaurant which he or she inspects and a City employee should not solicit a contribution from a vendor with which the employee is negotiating a contract on behalf of the City.

Cases 06-10, 06-13, 06-14, 06-15, 06-16, 06-21 and 06-22

The Board of Ethics dismissed all of these inquiries (complaints) concerning alleged police misconduct because the allegations, even if they were true, did not pertain to the Code of Ethics. The Board referred the complaining parties to the Police Department's Internal Affairs Bureau or the Office of Independent Monitor.

Case 06-11

A member of City Council requested an advisory opinion as to whether she was required by the Code of Ethics to abstain from voting on franchise matters that the law firm in which her husband was a partner had negotiated on behalf of a utility company with the City.

Neither the Council member nor her husband owns 1% or more of the utility company. Neither is an officer in the utility company. The husband was not involved in any way in negotiating the franchise between the City and County of Denver and the utility company and he has not represented the utility company in other matters. The law firm is a large worldwide law firm with more than 1000 lawyers.

The majority of the members of the Board of Ethics concluded that neither Section 2-61 of the Code of Ethics nor Section 1.2.9 of the Charter prohibit the City Council member from taking direct official action by discussing or voting upon sending the renewal of the franchise agreement to the voters.

However, in order to avoid the appearance of impropriety, the Board strongly recommended that she disclose on the record that her spouse is a member of the law firm that represents the utility company.

Case 06-12

The head of an agency within the Revenue Department requested an advisory opinion on two issues relating to his planned retirement from City employment in several months. The first issue is that he is considering outside part-time employment for a computer software company before he retires. The company specializes in software packages for government offices in other states and cities similar to the one headed by the employee. The company does not have any contract or impending contract with the City agency. The consulting work that the employee proposes to do is to help "trouble-shoot" and resolve problems that current clients of the company are having in other states and cities.

The second issue is that the employee is considering going to work for the same company as a consultant after he retires from City employment, doing the same type of work.

Regarding the first issue, the Board of Ethics advised the employee that he must obtain his appointing authority's approval of outside employment, as required by Section 2-63 of the Code of Ethics. The Board determined that it did not perceive a conflict of interest, based upon the employee's representation that he would only do consulting work for the company outside of Colorado and that he would have no direct official action role regarding any contracts with the City and County of Denver or role in drafting any requests for proposals or other bid documents on which the company might wish to bid. The Board also reminded the employee that he should not do any consulting work on City time or using City facilities, in order to avoid the appearance of impropriety.

Regarding the second (after retirement) issue, the Board concluded that, if he were to be employed by the company, pursuant to Section 2-64 of the Code of Ethics, the employee could not take direct advantage of matters with which he took direct official action while with the City during the first six months after he left City employment. For example, he could not administer a contract with Denver if he had any role in negotiating, approving or recommending the contract with the company while he was employed by the City. He should also not do any "trouble-shooting" for the company regarding the City and County of Denver during those six months.

Case 06-17

An agency head requested a waiver to allow him to accept out-of-state travel expenses and lodging from a company that has major computer software contracts with the City. The purpose of the trip was to participate in a panel along with representatives of other public sector clients at the annual meeting of the company The agency head would be in a position to "take direct official action" regarding any extension or modification of the contracts with the computer company. Therefore, he would be prohibited by Section 2-60(a) of the Denver Code of Ethics from accepting travel expenses from the company.

The Board then considered whether it would be in the "best interests of the City" to grant a waiver, pursuant to Section 2-54(f) of the Code of Ethics. The Board decided to grant a waiver to the agency head for this trip, finding that the contracts are extremely important to the City, including the ability to keep the software running smoothly at all times. His exposure to company executives will likely improve Denver's access to assistance and improvement regarding Denver's systems, which is in Denver's best interests. The meeting did not seem to be an effort designed to sell anything to the City and County of Denver. The Board, however, encouraged him to accept only moderate-cost travel, meals and lodging from the company, in order to avoid the appearance of impropriety.

Case 06-18

A sergeant in the Police Department requested an advisory opinion, at the request of his chain of command, regarding proposed outside business activity. The sergeant, along with some business partners, proposed to establish a for-profit company which would establish a discount card program. The company would 1) contact businesses, such as restaurants, dry cleaners and hardware stores, to participate in the discount card program by offering discounts to those who purchase cards from the company; 2) sell discount cards "to members of public safety agencies, including police, fire, sheriffs and paramedics" and other members of the public and 3) donate a portion of the proceeds to selected charities for each department…" as designated by the purchasers of each discount card.

The Board of Ethics advised the sergeant that, as with any outside employment or outside business activity, his involvement in the company must be approved in writing by his appointing authority, according to Section 2-63 of the Code of Ethics.

Discounts received by the company if solicited and accepted by the sergeant would be defined as "gifts" under Section 2-60(a) of the Code of Ethics.

However, if, as he promised, he would only solicit or accept discounts from businesses located outside the City and County of Denver, he would not be in a position to take direct official action (which includes "enforcing laws") over those non-Denver businesses. As a result, he would not

be prohibited from soliciting or accepting discounts from non-Denver businesses by Section 2-60(a).

The Board encouraged him, in order to avoid the appearance of impropriety:

- not to perform any company functions in uniform at any time
- not to perform any company functions on duty
- not to indicate in any company marketing efforts or allow any company representatives or literature to indicate that he is a member of the Denver Police Department
- not to market the program or cards to public safety departments (although unions or other voluntary membership organizations are acceptable), since some members of the Board felt that sometimes, if requested, public safety departments are called upon to investigate each other, which may result in inappropriate pressure to purchase cards
- to make sure that the company keeps careful records to document the charitable contributions