DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
January 1– June 30, 2007

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and June 30, 2007 in response to fact-specific requests for advisory opinions or inquiries (complaints). **They should not be used as conclusive guidance for situations where the facts may differ**.

Case 07-1

The Board of Ethics reviewed a request for an advisory opinion concerning whether a program director for the Commission to End Homelessness (within the Denver Department of Human Services) had a conflict of interest prohibited by the Denver Code of Ethics. The director serves and has served for many years as the unpaid volunteer president of the board of directors of a non-profit housing development corporation. The non-profit has received numerous loans from Denver's Division of Housing and Neighborhood Development, which is within the Office of Economic Development (a city entity separate from the Department of Human Services). The director and the director's supervisor and other city officials advised the Board of Ethics that the director is not and has not been involved in negotiating or approving or handling any loans or other transactions between the City and County of Denver and the non-profit corporation in the director's city capacity.

After reviewing Section 2-61 of the Code of Ethics, regarding conflicts of interest, the Board of Ethics determined that the director has not violated the Code of Ethics and that appropriate safeguards have been put in place and should continue in order to ensure that conflicts do not arise. The Board also recommended that the director should also abstain from taking part in any city loan matters at the non-profit, in order to avoid the appearance of impropriety.

Case 07–2

An employee of the Mayor's Office requested an advisory opinion and/or waiver from the Board of Ethics concerning whether he could leave city government and be hired as the executive director of a new non-profit community development financial institution, in light of the fact that he had been active in facilitating the creation of the non-profit and had served on a committee to select a company that would serve as the managing member of the non-profit.

Since very few people, if any, had such heavy involvement in launching the non-profit as the employee had, the Board of Ethics determined that, if hired as executive director of the non-profit, he would "take direct advantage, unavailable to others of matters with which" he 'took direct official action during" his "service with the city." Therefore, he would violate Section 2-64(a) of the Code of Ethics if he became executive director of the non-profit without waiting for six months after he left his employment with the City and County of Denver.

However, the Board of Ethics has the ability, pursuant to Section 2-54(f) of the Code of Ethics, to grant a waiver if it would "serve the best interests of the city." The Board of Ethics determined that the mission and goals of the City and County of Denver and the non-profit entity are very similar – revitalization of under-served Denver neighborhoods. The city and the non-profit are not competitors in this effort, but will work closely together. In addition, the Board of Ethics determined that it would be in the best interests of the city if the non-profit would not have to spend considerable time to train a new executive director who was not familiar with the City and County of Denver and under-served neighborhoods in Denver. Therefore, the Board of Ethics voted to grant the employee a waiver to authorize him, if selected, to serve as executive director or in any other position with the non-profit without waiting for six months from the termination of employment with the City and County of Denver.

Case 07-3

An employee of the Technology Services Division requested an advisory opinion from the Board of Ethics. The employee had a role in a contract renewal in 2006 between the City and County of Denver and a private vendor regarding purchase and maintenance of certain items of communications technology and wished advice from the Board whether she could work for that vendor after leaving employment with Denver.

The Board concluded that the employee was not prohibited by the Code of Ethics from being employed by the vendor (a national company) immediately after she left employment with the City and County of Denver. However, her involvement in approving the 2006 contract renewal with the vendor amounted to "direct official action," by "negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract." Therefore, the Board concluded that if she became employed by the vendor within six months of leaving her job with the City and County of Denver, she should abstain from dealing with the City and County of Denver for at least six months regarding vendor sales after leaving city government in order to avoid a violation of Section 2-64(a) of the Denver Code of Ethics.

Case 07-4

The Director of the Division of Housing and Neighborhood Development (DHND) requested an advisory opinion regarding potential conflicts of interest by DHND employees with respect to ascertaining eligibility for participation in Denver's affordable housing program. The Board determined that the certification of eligibility to purchase an

affordable home under the city's affordable-housing program does not technically amount to "direct official action," in Section 2-61 of the Denver Code of Ethics pertaining to conflicts of interest because the city is not a "party" to the "contract" between the buyer and the seller of the home and the city does not "grant" any funds to the purchaser. Therefore, if a DHND employee certified eligibility of himself or herself or a co-worker in DHND or an immediate family member or a business associate, the employee would not violate 2-61. However, the appearance of impropriety in such a situation is glaring, because certification of eligibility is potentially a large financial benefit.

The Board of Ethics strongly recommended the following in order to avoid the appearance of impropriety. No employee of DHND should have any role in reviewing, approving or disapproving eligibility for the Denver affordable housing program for 1) him or herself or 2) any other DHND employee or 3) an immediate family member of him or herself or of any other DHND employee or 4) an outside employer or a business associate of him or herself or of any other DHND employee. If such a person applies for certification of eligibility, the entire review and certification process shall be handled by an outside contractor with no DHND employee attempting to influence the decision

The Board noted that any city employee, including an employee of DHND, should be able to be certified for participation in the affordable housing program so long as he or she complies with the certification criteria.

Case 07-7

An employee in the Career Service Authority requested an advisory opinion and/or a waiver regarding whether acceptance of travel and lodging expenses from a for-profit corporation for participation on a panel at an out-of-state conference violated the Code of Ethics. The company has a contract with the City and County of Denver to provide an on-line training system, which the employee helps to administer. The contract will be up for renewal in 2008. The employee was not involved in the negotiation of the 2003 contract.

The Board of Ethics determined that it would violate Section 2-60(a) of the Code of Ethics for the employee to accept the travel and lodging expenses, because he will likely be in a position to recommend for or against a contract renewal with the company, which is part of the definition of "direct official action." The Board, however, granted the employee a waiver because it would be "in the best interests of the city" for the employee to attend the conference, participate in the panel and bring back and apply information about "organizational learning" to the city.

Case 07-8

A citizen filed an inquiry (complaint) concerning his City Council representative. The citizen alleged that the Councilperson misrepresented to him that the Councilperson had made efforts, at the citizen's request, to resolve a dispute that the citizen's company had with a city department.

The Board of Ethics dismissed the inquiry at the screening stage, stating that "there is no provision of the Denver Code of Ethics that such conduct would violate," even assuming the truth of the complaining party's allegations. The Board noted that the citizen "hinted at a possible conflict of interest…but provided no information that such a conflict actually exists."

Cases 07 – 9 and 07 – 10

A citizen filed inquiries (complaints) concerning the Auditor and a staff member in his office. In summary, the citizen complained that the Auditor's re-election campaign (he was running for re-election in the May 1, 2007 city election) paid fees to a communication company operated by the employee in 2007 at the same time that the employee was drawing a city salary for his work in the city office.

The complaining citizen suggested that the employee may have used city resources or city time in his work on the re-election campaign. If so, this might violate Section 2-67 of the Code of Ethics – use of public office for private gain and/or Section 15-31(E) of the Career Service Authority Code of Conduct regarding political activities. However, the citizen did not provide any facts to substantiate the suggestion and the Board stated that "the Board has to be provided with more than a suggestion or an assumption to proceed with a hearing.

Both the Auditor and the employee indicate that they are conscious of and comply with the Code of Ethics and the city rules prohibiting use of city time or resources for private or political purposes.

They both acknowledged that the employee failed to submit an annual renewal of his outside employment form for his communication company that he had originally submitted in 2003. In September 2004 City Council amended Section 2-63 to require an annual renewal; however, the employee said that his failure to comply with the annual renewal was an "inadvertent and unintentional oversight." The Auditor indicated that he has now taken measures to remind everyone in his office that the outside-employment permission form must be renewed annually and also that public resources must not be used for private or political business.

The Board of Ethics concluded that the failure of the employee to obtain annual renewal of permission for outside employment and the Auditor's failure to request or require such annual renewal violated Section 2-63 of the Denver Code of Ethics; however, they were minor, inadvertent violations which have been corrected and which do not warrant a public hearing or any further action. The Board, therefore, dismissed these inquiries.

Case 07 - 11

The Mayor requested an advisory opinion and/or a waiver regarding fundraising for the 2008 Democratic National Convention, which will take place in Denver. The Mayor is a member of the Democratic Party's host committee for the convention, which has an application pending with the Internal Revenue Service for 501(c)(3) tax-exempt status.

He requested the Board of Ethics to grant him a waiver from Section 2-60(a) of the Code of Ethics, so that he may solicit and/or accept travel to relevant cities on private planes from individuals or entities during trips to raise contributions to cover many expenses of the convention that the Democratic National Committee expects the host committee to raise. The Denver host committee will need to raise several million dollars to assist in various convention expenses.

The solicitation or acceptance of gifts is governed by Section 2-60(a) of the Code of Ethics:

> **Sec. 2-60. Gifts to officers, officials, and employees.**
>
> (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 or 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;
>
> (2) Any honoraria or payment for participation in an event…
>
> (6) Travel expenses and lodging;

Presumably many of the targets of the Mayor's fundraising efforts would be persons or entities to which both of the key elements of 2-60(a) do not apply – in other words, the Mayor would not be "in a position to take direct official action" concerning the prospective donor and/or the City and County of Denver would not have an existing, ongoing or pending contract, business or regulatory relationship with the prospective donor. If that is the case, Section 2-60(a) would not prohibit the Mayor from accepting travel from such a person or entity. However, it is likely that both of those conditions would apply regarding some potential donors.

Section 2-54(f) of the Code of Ethics permits the Board of Ethics to grant a waiver if "the waiver will serve the best interests of the city."

The Board of Ethics granted a waiver to the Mayor to allow him to solicit and/or accept travel and/or lodging expenses even if both of the two criteria in Section 2-60(a) apply, because his efforts will be important to raising adequate funds from private sources to put on a successful convention, which will be in the best interests of the city. The convention is expected to bring at least 35,000 visitors to Denver and to generate $150 million to $200 million in revenue to the city and will generate significant exposure from television, newsprint and websites that will focus national attention on Denver.

In order to avoid the appearance of impropriety, however, the Board encouraged the Mayor to:

- Minimize the number of persons or entities that he attempts to raise funds from that 1) he has direct official action power over and that 2) do business with the City and County of Denver. As mentioned above, many targets probably would not have those two connections with the City and County of Denver.
- Minimize the number of persons or entities that the Mayor solicits that he was directly and personally involved with in such aspects of direct official action (as defined in Section 2-52(b) of the Code of Ethics) as negotiating a contract or selecting a vendor or enforcing laws
- Minimize the solicitations that he does of persons or entities that he had directly dealt with or will deal with in a direct official action capacity a short time before or after the time of the solicitation
- Encourage the host committee and/or the Democratic National Committee to disclose to the public the sources and amounts of donations.

The Board noted that the reason for these cautionary recommendations is so that, even though the Board of Ethics has granted a waiver, neither the public nor the potential donors should perceive that potential donors may be treated more favorably by the City and County of Denver if they contribute or less favorably if they fail to contribute.

The Board determined that this waiver shall expire thirty days before the commencement of the 2008 Democratic National Convention.

Case 07 – 12

A sergeant in the Sheriff's Department was recently assigned to work at the Pre-Arraignment Detention Facility (PADF), where his brother also works. The brothers work in different units and on different shifts, although the shifts largely overlap two days per week. The sergeant requested an advisory opinion and/or a waiver regarding Section 2-59 of the Code of Ethics, which prohibits city employees from hiring or supervising members of their immediate families (including brothers).

Although the sergeant said that he does not have any supervisory authority over his brother or his brother's supervisor, the Board of Ethics granted a waiver to the sergeant in case he might need to supervise his brother for a short time due to an emergency at PADF or due to changes in work schedules due to vacation or sick leave. The Board, however, advised the sergeant that, if such a situation occurred, he should not take any "personnel

actions" regarding his brother, such as recommending a raise, changing working hours or performing a personnel evaluation.

Case 07 – 14

A city employee filed an inquiry (complaint) concerning his supervisor, alleging that the supervisor had unfairly reprimanded him, punished him by reneging on a salary promise and treated the employee in an indignant, arbitrary, capricious and biased manner. The employee attempted to get relief through his department and the Career Service Authority appeal process, but was unsuccessful.

The Board of Ethics concluded that the allegations and issues raised by the employee are not addressed by the Denver Code of Ethics and that the Board of Ethics does not have the ability to hear appeals from departmental personnel actions, which can only be dealt with through the Career Service or Civil Service appeals processes.

Case 07 – 15

A restaurant inspector filed a request for an advisory opinion concerning outside employment. He wished to know if he would violate the Code of Ethics if he held a part-time outside job doing private "third-party audits" of restaurants outside of the City and County of Denver for a company which is hired by restaurant chains. The audits are simply educational for the restaurant management and have no governmental enforcement function.

The Board of Ethics concluded that such outside employment would be allowed, so long as it is approved in writing on an annual basis by his appointing authority, pursuant to section 2-63 of the Code of Ethics and, so long as he does not negotiate any contracts or approve any purchase orders or take any other direct official action as a city employee with his private employer, as required by Section 2-61.

In order to avoid the appearance of impropriety, the Board also recommended that the employee:

- should not audit any restaurant facilities for the private employer in the City and County of Denver.
- should request his supervisor to re-assign another inspector if any restaurant in Denver to which he is assigned is operated by a chain company which he has privately audited or is auditing
- should inform his supervisor in writing of which facilities he is auditing for the private company
- should not use any city resources or city time for his outside employment

Case 07 – 16

The Director of the Junior Golf Program in the Parks and Recreation Department requested an advisory opinion as to whether there would be a violation of the Denver Code of Ethics or any other ethical problem if the employee would give a "testimonial" to a for-profit media company that the company could use on its website to promote its services.

The company publishes, under a contract with Denver Golf which the employee helped to negotiate, yardage books for Denver's Municipal Golf Courses, which are booklets showing the locations of tees, distances to greens, instructions and tips for each hole on the golf course. Under the contract, the company receives its remuneration from selling advertising in the yardage books.

The Code of Ethics does not directly address a situation such as this; however, the Board of Ethics concluded that, so long as the employee does not personally receive any type of gift in return from the company, it would not violate the Denver Code of Ethics or be otherwise improper for the employee to give a factual testimonial to the company describing the quality of its work for Junior Golf Program. The Board indicated, however, that there may be an internal policy within the Department of Parks and Recreation concerning this issue with which the Board of Ethics is not familiar.

Case 07 – 17

A citizen of Denver who has been interested in helping disadvantaged Denver children to go skiing and/or obtain ski lessons at Winter Park Ski Resort filed an inquiry (complaint) concerning the Manager of the Department of Parks and Recreation.

Winter Park Ski Resort is owned by the City and County of Denver and has, since 2002, been operated and is being redeveloped by a private company. The Manager is a member of the board of the Winter Park Recreation Area, appointed by the Mayor. The function of the board is to oversee the administration, operation and maintenance of the Winter Park Recreation Area.

The citizen said that he understands that the Manager "received 500 ski passes to Winter Park Resort last season." and said that the Parks and Recreation Department has refused to provide free Winter Park passes to children. The citizen did not provide any evidence that the Manager personally used any ski passes. The Manager's response outlined a program in which the Department of Parks and Recreation "partners" with the private operator of the Winter Park Ski Resort for a youth ski program (which served 980 participants in 2006-2007) and another program of discounted ski passes for City employees (which served 258 participants in 2006-2007). The Manager indicated that she did not use any free passes for her personal use.

The possible violations of the Denver Code of Ethics that are implicated by the inquiry are whether the Manager may have violated Section 2-60(a) (improper acceptance of a

gift by a person in a position to take direct official action concerning the Winter Park Recreation Area) and/or Section 2-67 (use of public office for private gain).

Without any information that the Manager used any donated ski passes for personal use, there is no evidence of a violation of either of these sections of the Code of Ethics. Therefore, the Board decided to dismiss this inquiry.

The Board of Ethics, however, encouraged the Manager, if she and/or the Department of Parks and Recreation receive any type of allocation of free or reduced-price ski passes for Winter Park, to make available to the public an accounting of the distribution of all such passes. This is, in the words of Section 2-51 of the Code of Ethics, "so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public."

Case 07 – 18

An employee of the Public Works Department requested an advisory opinion concerning possible subsequent employment. The employee received an offer of employment from a large international company. The employee would re-locate to a company office on the East Coast. The employee had a role in negotiating one Denver contract with the company in 2005, but has not negotiated or approved any other contract with the company.

The employee agreed that, if he goes to work for the company, he would not do any work pertaining to the City and County of Denver until at least six months have elapsed from his retirement from his city job.

The Denver Code of Ethics regulates subsequent employment in Section 2-64:

> **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.
>
> (b) For one (1) year following termination of service with the city, no former officer, official, or employee shall engage in any action or litigation in which the city is involved, on behalf of any other person or entity, when the action or litigation involves an issue on which the person took direct official action while in the service of the city.

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

The Board of Ethics concluded that the Denver Code of Ethics does not prohibit the employee from going to work for the company, but that, if he does so, he must not do any work relating to the contract which he helped to negotiate between the company and Denver until at least six months have expired from the date of his termination of employment with the City and County of Denver. In order to avoid the appearance of impropriety, the Board further recommended that, as he agreed, he not do any work pertaining to the City and County of Denver until at least six months have elapsed after his retirement from his city job.

Case 07 - 20

A City Councilmember requested an advisory opinion concerning a possible vote on a rezoning matter. The Councilmember has decided to move her district office to a new location in a mixed-use development. The leasing negotiations are being conducted by the Asset Management Office of the City and County of Denver. The Councilwoman has not been personally involved in the lease negotiations. The agreed-upon lease payments will be at market rate. Payments for the lease will be from the City Council budget and will not impact the Councilmember's personal finances.

The owner of the proposed district Council office has applied to rezone a parcel of land immediately adjacent to the proposed office space. The rezoning will likely increase the value of the landlord's land and probably will increase the attractiveness of the new district Council office. The Councilmember wishes to know if the Code of Ethics would require her to abstain from voting on the rezoning.

Under Colorado law, rezoning is deemed to be a quasi-judicial action.

The conflict of interest section of the Code of Ethics, Section 2-61, does not directly deal with a situation such as this. The section provides:

> **Sec. 2-61. Conflict of interest while employed.**
>
> (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…

The definition of "substantial interest" does not include an arms-length landlord-tenant relationship such as that between the landlord and the Councilmember in question.

In addition, the definition of "direct official action" in Section 2-52(b) does not include voting on quasi-judicial matters such as rezonings.

The Board of Ethics concluded that the Denver Code of Ethics does not prohibit the Councilwoman from voting on a rezoning for property owned by the landlord of her city office and which is immediately adjacent to her city office. However, the Board recommended (not required) that the Councilmember should, in order to avoid the appearance of impropriety, consider abstaining from voting on the rezoning and also from taking part in the discussion at the City Council meeting or attempting to influence other City Council members regarding this rezoning application. This is due to the specific facts of this case that the applicant for the rezoning will be the landlord of the Councilwoman's city office and her city office will be immediately adjacent to the land being considered by City Council for rezoning.

The Board also encouraged the Councilmember to consult with the City Attorney's Office because there are a number of other factors which a Councilmember may need to consider in a quasi-judicial rezoning matter which are beyond the purview of the Board of Ethics.